



HEALTHY VENDING AND THE RANDOLPH SHEPPARD ACT¹

Vending machines are frequented by community members in city and county buildings, parks, and recreation centers. The vending machines often sell snacks and beverages high in sugar, fat and salt, with little nutritional value. Federal, state, and local governments can increase access to healthy foods and beverages for their residents by requiring all vending service providers to ensure healthier options are sold in vending machines on public property. Vending service providers are important allies in any healthy vending initiative. Legally blind vendors can be particularly influential in what is sold in vending facilities located on government property because of the Randolph Sheppard Act. The Randolph Sheppard Act and similar state laws provide a priority for state licensing agencies to develop vending businesses on specified government properties for legally blind vendors to operate. While state licensing agencies may not develop vending businesses in all locations under their authority, there is a good chance many of the vending businesses on government properties are operated by a legally blind vendor. Thus, these vendors can be key stakeholders in any effort to provide healthier food and beverage options in vending facilities. This fact sheet discusses the Randolph Sheppard Act and what the law means for healthy vending efforts.

What is the Randolph Sheppard Act?

The Randolph Sheppard Act (“Act”) is a federal law that gives legally blind vendors advantages over other vendors who operate vending facilities (e.g., vending machines, cafeterias, and snack bars²) on federal property.³ The Act establishes a vending business program in each state, often referred to as the Business Enterprise Program or BEP. The BEP is designed to provide self-employment opportunities for qualified legally blind individuals.⁴ The Act provides general guidance on how the BEP should be operated in each state. Each state designates a state licensing agency (SLA) that oversees implementation of the Act. The SLA recruits, trains, and licenses legally blind individuals interested in and eligible to participate in the BEP. BEP participants work actively with the SLA on developing major administrative decisions which affect the BEP. Typically, the SLA applies for a permit or submits a bid on a contract to operate a vending facility on federal property. Blind vendors also can directly bid on a vending facility contract. If the federal agency determines the permit application or bid is within competitive range (i.e., price and ability to meet specified standards), then the agency generally must issue the permit or award the vending contract to the SLA or blind vendor.⁵ In this situation, before the federal agency can approach other non-blind vendors, the agency must obtain a written waiver from the SLA.⁶ The Act also requires that if a non-blind vendor is in direct competition (i.e., at the same location) with a blind vendor operated facility, a portion of the income from the non-blind vendor must be given to the blind vendor or SLA.⁷



How does the Randolph Sheppard Act apply to state and local governments?

Nearly every state has adopted laws similar to the Randolph Sheppard Act (also known as mini-Randolph Sheppard Acts). These laws provide additional authority to SLAs impacted by a specific state mini-Randolph Sheppard Act to exercise authority on other state or local government property in the state. State blind vendor laws give eligible legally blind vendors priority over non-blind vendors to operate vending facilities on specified public property in the state. The overall objective of these laws is to provide employment opportunities to qualified and eligible legally blind individuals. These state laws vary in how they define vending facilities or give preference to blind vendors or SLAs.

For example, Minnesota's Randolph Sheppard law provides the SLA with an exclusive authority to establish and operate vending stands and vending machines in specific state educational institutions and in any department or agency of the state of Minnesota except for Department of Natural Resource properties operated directly by the Division of State Parks and not subject to private leasing.⁸



Some of the state blind vendor acts extend to city, county, municipal and other property, as well.⁹ For example, Massachusetts' Randolph Sheppard Act applies to state (commonwealth) property and county property.¹⁰ Thus, a city like Boston would not be held to the state's blind vendor act. However, any federal or state property within the city is still subject to the federal Randolph Sheppard Act and state Massachusetts' version, respectively. Likewise, county property in Massachusetts is also subject to Massachusetts' Randolph Sheppard Act.

While this fact sheet addresses the federal Randolph Sheppard Act, the information provided here is also applicable to states with similar blind vendor acts (which may include counties and cities). For brevity and clarity this Q&A will refer to all federal, state, and local agencies that are required to adhere to a blind vendor act as "impacted government property or agency."

What government agencies are responsible for managing the Randolph Sheppard Program?

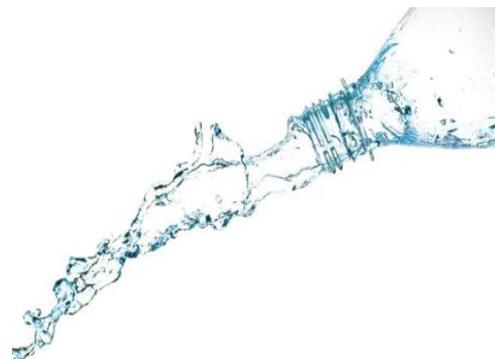
Each state has an SLA that is designated by the United States Department of Education and is responsible for the administration of the BEP.¹¹ The state agency responsible for administering the Act depends on the state-specific statutory language in each state. The SLA may vary from state to state, and includes agencies such as the state's rehabilitation agency or the state's commission for the blind.¹² The SLA identifies which locations in the state are subject to the Act and/or similar state law and evaluates the location's viability as a profitable business opportunity.¹³ The SLA then applies to a federal agency for a permit or submits an offer in the competitive bidding process to establish and maintain vending facilities on the property.¹⁴ The SLA is also responsible for the licensing and placement of blind vendors eligible to operate vending facilities on public property.¹⁵

Policies and procedures implementing the Randolph Sheppard BEPs may differ from state to state because the Act requires each SLA to work with elected committees made up of the legally blind BEP vendors.¹⁶ In instances where a legally blind vendor disagrees with a decision rendered by the SLA, the legally blind vendor can file a grievance with the SLA. The SLA then conducts a hearing to resolve the complaint. If the complaint is not resolved, the blind vendor and/or the SLA can then file a complaint with the Secretary of the Department of Education. The grievance process is outlined in the Act.¹⁷

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What advocacy groups and trade organizations provide support to the blind vendors participating in the Randolph Sheppard Business Enterprise Program?

National advocacy organizations, state commissions for the blind, and local business trade associations offer resources to help blind persons achieve economic and vocational independence as licensed blind vendors through the Randolph Sheppard BEP. National advocacy groups such as the National Association of Blind Merchants (NABM) and the Randolph-Sheppard Vendors of America (RSVA) provide a collective voice for participants in the BEPs. These organizations may be wary of any laws or policies that could keep blind vendors from fully benefiting from the Randolph Sheppard Program. In some instances, blind vendor merchants have used their lobbying power to hinder state and local efforts to laws that they believe will negatively impact blind vendors, including some healthy vending initiatives.¹⁸



What does the Randolph Sheppard Act mean for healthy vending efforts?

Because of the preference blind vendors have in government vending facility contracts and the political pressure from blind vendor lobbying groups, blind vendors rarely have competition on impacted public property and are influential in determining the product offerings in vending machines at the site.

The SLAs and licensed blind vendors generally have a lot of discretion to decide what products to sell and what prices to charge.¹⁹ However, the Act requires licensed blind vendors operating vending machines on public property to comply with applicable requirements of the federal agency that owns the property, as well as with federal, state, and local laws and regulations.²⁰ Presumably, this would include laws establishing nutrition standards for vending machines on public property and healthy procurement guidelines for state and local agencies to purchase healthier foods.²¹ Policymakers are increasingly seeking to implement healthy vending policies for foods government agencies sell to their employees and the public (e.g., cafeterias, concession stands, and vending machines). Requiring vendors, including blind vendors, to meet healthy nutrition standards in their bids or proposals to operate a vending facility on public property is important to ensuring healthy vending laws and policies are actually implemented.

Blind vendors, however, may be reluctant to limit their product offerings to only healthy selections due to fears that this would result in lower profits. An SLA or blind vendor may have a permit or contract to operate a vending facility, but choose not to follow the impacted government agency's healthy vending policy. Failing to comply with the terms of a permit or contract may result in the SLA or blind vendor losing their right to operate a vending facility on the impacted government property.²² In this case, the SLA or licensed blind vendor can

file a complaint regarding alleged violations of the Act.²³ In other situations, the implementation of healthy vending efforts can be delayed because no blind vendors will bid on contracts with nutrition standards for vending machines. The impacted government agency can try to engage blind vendors in the development and implementation of healthy vending policies (see the resources below for more information on how to work with vendors). Otherwise, the agency can take the necessary steps to obtain a bid from non-blind vendors.



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How can policymakers and public health advocates support the Randolph Sheppard Program and the need for healthier options in vending machines?

Many state and local governments that want to increase access to healthy foods and beverages in vending machines on public property also support public policy that provides employment opportunities for blind vendors. Some policymakers have passed laws and policies establishing nutrition standards for vending machines on public property in states with blind vendor acts despite blind vendor opposition. For example, blind vendors in New York City, who have as much as 60 percent of their sales from higher-calorie drinks, protested that the healthy vending policy could significantly hurt business.²⁴ Yet, the city's mayor signed an executive order in 2011 that established nutrition standards for food vending machines and beverage vending machines on city property.²⁵

Policymakers and public health advocates are increasingly finding ways to engage blind vendors on the issue of healthy vending. For example, in Tennessee (which has a state version of the Randolph Sheppard Act²⁶) the governor signed an executive order in 2010 that mandates nutritional standards for vending machines on state executive branch properties.²⁷ To address the concerns of the SLA and blind vendors, the governor also required that (1) the nutrition standard setting process include the blind vendor representatives, (2) state agencies amend existing permits once the new standards were established and (3) pricing and other incentives that encourage people to purchase healthier options be included.²⁸ In Indiana, the state health department developed relationships with vending machine operators before the agency implemented a healthy vending policy.²⁹ As a result, local vendors have been supportive with the state initiative to increase healthy vending options across the state.



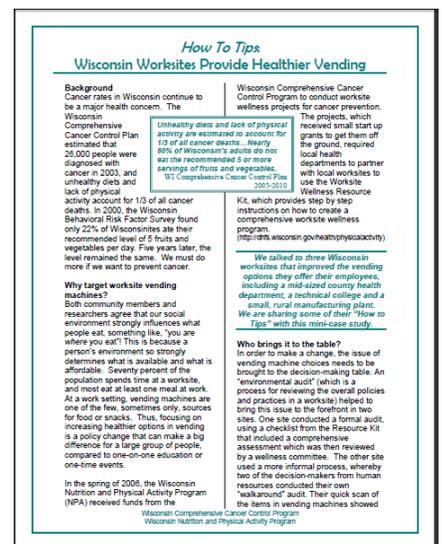
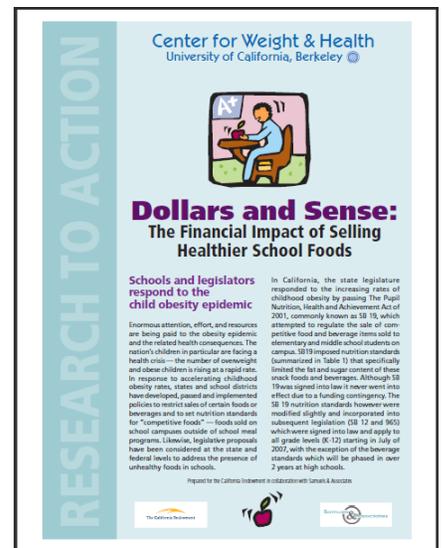
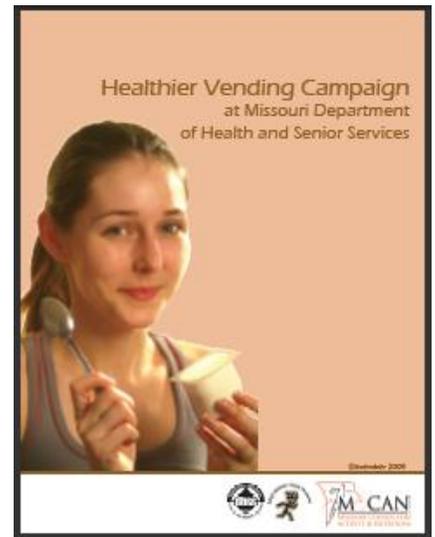
What are some resources for working with Randolph Sheppard Program blind vendors to implement healthy vending policies?

Successfully passing and implementing a healthy vending law or policy will require policymakers and public health advocates to find common ground with blind vendors. Working together, advocates and blind vendors can find ways to address the vendors' revenue concerns while also advancing the goal of improving the nutritional quality of foods and beverages sold. For example, nutritional standards for vending machines can be developed together with pricing and other incentives that encourage people to purchase healthier options. Also, several public health departments, such as Wisconsin and Iowa, have conducted research and pilot studies to determine the impact of vending healthier snacks and food on profits.

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When approaching blind vendors to promote a healthy vending policy some resources to consider include the following:

- ✓ Association of State & Territorial Public Health Nutrition Directors Healthy Vending Machine Sales Data (collection of data and resources on financial impact of selling healthier foods) http://astphnd.org/resource_read.php?resource_id=225&sid=a9cb71&origin=&category
- ✓ Eat Well Work Well (provides healthy vending program strategies and guidelines, vending machine inventory tool, and sample policies) <http://www.eatwellworkwell.org/vending.htm>
- ✓ Iowa Health Department’s Nutrition Environment Measures – Vending (NEMS-V) (has a website with sample nutrition standards and purchasing policies, vending policy toolkit, and success stories) http://astphnd.org/resource_read.php?resource_id=225&sid=a9cb71&origin=&category
- ✓ Wisconsin Nutrition and Physical Activity (NPA) Program’s Healthy Vending Machine Project (a report on the outcomes of the project and tips for other states and worksites to implement healthy vending policies) <http://www.dhs.wisconsin.gov/health/physicalactivity/Sites/Worksite%20pdfs/HowToVending.pdf>
- ✓ California (which has a state law similar to Randolph Sheppard Act that includes county and city property³⁰) passed a vending law that requires at least 35 percent of the food and at least one-third of the beverages offered in vending machines on state property to meet certain nutritional standards.³¹ However, many California cities and counties are implementing laws and policies requiring 50 percent and up to 100 percent healthy options in vending machines on public property, including recreation centers and sports facilities. For more sample policies, see:
- ✓ California Center for Public Health Advocacy’s summary of Local Beverage Policies Adopted by California Cities; and Counties http://www.publichealthadvocacy.org/PDFs/beverage_policies/CABeveragePolicies_Cities_Counties.pdf
- ✓ Bay Area Nutrition & Physical Activity Collaborative Healthy Vending Machine Toolkit, http://www.banpac.org/healthy_vending_machine_toolkit.htm



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¹ This document was last updated on August 13, 2012.

² 20 U.S.C. § 107e (7) (2011) (A vending facility includes automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other auxiliary equipment).

³ U.S. 20 U.S.C. § 107e (3) (2011) (The law defines “federal property” as including buildings or lands “owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the U.S. Postal Service),” the District of Columbia, or any other territory or possession of the).

⁴ 20 U.S.C. § 107 et seq. (2011) (The Randolph Sheppard Act was originally passed in 1934.)

⁵ *New Hampshire v. Ramsey*, 366 F.3d 1, 27-29 (1st Cir. 2004) (Regarding priority in cafeteria services.) *See also*, 20 U.S.C. § 107(b) (2011) and 34 C.F.R. §§ 395.30, 395.33 (2011).

⁶ *New Hampshire v. Ramsey*, 366 F.3d 1, 28 (1st Cir. 2004)

⁷ 20 U.S.C. § 107d-3 (7) (2011) and 34 C.F.R. § 395.32 (2011).

⁸ Minn. Stat. Ann. § 248.07 (2011).

⁹ *See, e.g.*, Cal. Welf. & Inst. Code § 19625 (c) (2011) (requiring priority to be given to blind vendors on state property, and encouraging establishment of licensed blind vendors on all property within the state, including private, city, and county-owned property); and T.C.A. § 71-4-501 et seq. (2011) (requiring priority to be given to blind vendors on all public property within the state, including local government-owned property, with limited exceptions).

¹⁰ Mass. Gen. Laws Ann. ch. 6, § 133A (“...any buildings or property of the commonwealth, or any county thereof, with the exception of any building, land, or other real property under the jurisdiction of any state university or state institution of higher learning...shall adopt such policies...blind persons licensed by the commission for the blind will be given preference in the establishment and operation of vending facilities on property under their jurisdiction.”).

¹¹ 20 U.S.C. § 107a(a) (2011) and 34 C.F.R. § 395.7 (2011).

¹² 34 C.F.R. § 395.5 (2011).

¹³ 20 U.S.C. § 107a(c) (2011).

¹⁴ 34 C.F.R. §§ 395.16, 395.33, 395.34 (2011).

¹⁵ 34 C.F.R. § 395.7 (2011).

¹⁶ 34 C.F.R. § 395.14 (2011). *See also*, National Council of State Agencies for the Blind. *Frequently Asked Questions Regarding the Randolph-Sheppard Act*. 2006. Available at: www.ncsab.org/randolphSheppard/info/faq.htm

¹⁷ 20 U.S.C. §§ 107d-1, 107d-2 (2011). *See also*, *Kentucky Dept. for the Blind v. U.S.*, 424 F.3d 1222 (Fed. Cir. 2005), and *Randolph-Sheppard Vendors of Amer. v. Weinberger*, 795 F.2d 90, 93 (D.C. Cir. 1986).

¹⁸ Law S. “Battle for Healthy Snacks,” *Portland Tribune*, May 26, 2011. (Last accessed Sept. 22, 2011). Available at: www.portlandtribune.com/news/story.php?story_id=130635999331986600.

¹⁹ 34 C.F.R. § 395.35(c)(2011). *See*, *Minn. Dept. of Jobs and Training v. Riley*, 18 F.3d 606, 609-10 (8th Cir. 1994) (Veterans Canteen Services could not limit blind vendor’s merchandise selection, prices, or charge a commission on vendor’s sales at a vending facility located in a Veterans Affairs Medical Center through a contract, but was required to use the RSA permitting process). *See also*, *Kentucky State Univ. v. Kentucky Dept. for the Blind*, 923 (S.W. 2d 296 (Ky Ct. App. 1996) (state law extending RSA to state government prohibited state university from unilaterally prohibiting blind vendor from selling non-Coca Cola products, despite university’s exclusive contract with Coca-Cola).

²⁰ 34 C.F.R. § 395.4(a) (2011).

²¹ Another example is the federal menu labeling law, which requires vending machine owners and operators of at least 20 vending machines must provide nutrition labeling for foods sold in vending machines. Vendors with less can still opt in to the federal requirements. Patient Protection and Affordable Care Act, Sec. 4205 (Public Law 111-148).

²² 34 C.F.R. § 395.35(b) (2011).

²³ 20 U.S.C. § 107d-1(a), (b) (2011).

²⁴ Gorta W.J.. “Blind vendors protest Bloomberg’s plan to limit high-cal drinks.” *New York Post*, June 10, 2011. Available at: www.nypost.com/p/news/local/blind_vendors_rail_against_bloomberg_5LmzFeeOfB8SbF4ZIQ31KJ

²⁵ New York City Department of Health and Mental Hygiene, *New York City Food Standards*. Available at: www.nyc.gov/html/doh/html/cardio/cardio-vend-nutrition-standard.shtml

²⁶ T.C.A. § 71-4-501 et seq. (2011).

²⁷ Tenn. Exec. Order No. 69 (August 6, 2010), available at <http://www.tn.gov/sos/pub/execorders/exec-orders-bred69.pdf>.

²⁸ *Id.*

²⁹ Association of State & Territorial Public Health Nutrition Directors. *Healthy Vending Machine Sales Data*. Available at: http://astphnd.org/resource_read.php?resource_id=225&sid=a9cb71&origin=&category

³⁰ Cal. Welf.& Inst. Code § 19625(c) (2011) On all other property within this state, whether owned or controlled privately or by any county, city, city and county, or other political subdivision, the department shall take all feasible steps to encourage and establish vending by blind persons licensed under this article. The department may enter into appropriate agreements with the entities or persons owning or controlling the other property.

³¹ Cal. Gov. Code § 11005.4 (2011) (the law includes an expiration deadline).