

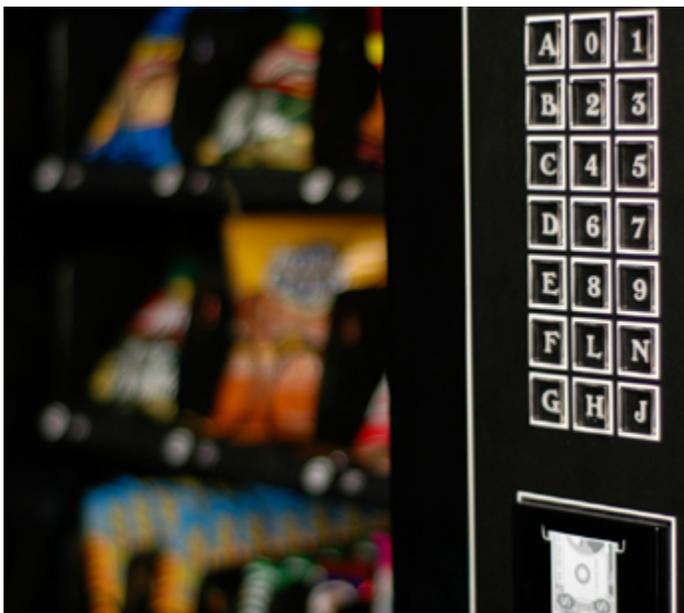


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Healthy Vending in Kansas and the Randolph-Sheppard Act

Food vending and concessions operators play a powerful role in shaping community food environments. Snack stands, cafeterias, and vending machines can be found in many locations across Kansas communities, including in city and county buildings, parks, recreation centers, pools, zoos, and other places. All too often, however, the food and drink choices available in these outlets are high in calories, added sugars, and salt, and have little nutritional value. For example, a recent survey of vending machine foods on public property found that only 15% of the available foods qualified as healthy or healthier (such as vegetables, granola bars, or nuts), and that more than half of vended beverages had high sugar content.¹ One way that federal, state, and local governments can increase community access to healthy foods and beverages is to establish policies that include nutrition standards for the foods that are served or that are sold by food service facilities that they own or manage.



Legally blind vendors are a particularly important group to bring into discussions about healthy vending efforts on government property because of a federal law called the Randolph-Sheppard Act² and its state law counterparts. These laws require that legally blind vendors be given priority in operating vending machines and other food services on government property. Almost every state, including Kansas, has passed this kind of law.³ This fact sheet explains how the Randolph-Sheppard Act and its Kansas



This fact sheet is funded by the Kansas Health Foundation to increase access to and consumption of healthy food in Kansas.

State Government Control of Local Food Policy

In 2016, the Kansas legislature passed a law⁴ that restricts the authority of local governments to regulate food service operations and some aspects of food production and sales. However, the law specifically does not restrict local governments from “owning or managing a food service facility and from purchasing and serving food products according to the Kansas food code and their own policies as long as those policies are not laws or ordinances restricting any other entity.”⁵ So, local governments may implement healthy vending initiatives through policies, but not through laws or ordinances that restrict other entities.

counterpart work and discusses what these laws mean for healthy vending efforts in the state.

What is the Randolph-Sheppard Act?

The Randolph-Sheppard Act (RSA or “the Act”) is a federal law that gives legally blind vendors priority in the operation of vending facilities (e.g., vending machines, cafeterias, snack bars, etc.)⁶ on federal property.⁷ The RSA was one of several Great Depression-era laws developed to help blind individuals become economically independent. The RSA requires the creation of blind vendor training programs, also known as business enterprise programs (“BEP”s), in every state, and calls for each state to designate a state licensing agency to oversee the BEP and implement other RSA provisions.⁸ Kansas’ state licensing agency is Vocational Rehabilitation Services, which is part of the Kansas Department for Children and Families.⁹ The state licensing agency identifies which locations in the state are subject to the RSA

and evaluates the location’s potential as a profitable business opportunity for participants.¹⁰ It recruits, trains, and licenses legally blind individuals to participate in the BEP. Each state licensing agency is also charged with establishing an elected committee comprised of blind vendors who are actively engaged in administering the state’s BEP.¹¹

State mini-Randolph-Sheppard Acts (also referred to as state blind vendor laws) generally extend the priority that legally blind individuals have on federal property to state property, and, in some cases, to local government property.¹²

How does federal RSA preference work?

When an opportunity to establish a vending operation on federal property is identified, the state licensing agency will be invited to apply for a permit or submit a competitive bid for a contract (in the case of cafeterias only).¹³ Regarding competitive bids for cafeteria operations, if the federal agency determines that the bid is within “competitive range” with respect to criteria such as price and ability to meet specified standards, then the agency typically must grant the contract to the state licensing agency.¹⁴ Generally, the federal agency must obtain a written waiver from the state licensing agency before it can approach non-blind vendors about operating a vending facility on its property.¹⁵ 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 to the state licensing agency.¹⁶

How does Kansas’ blind vendor law work?

Kansas’ blind vendor law can be found at Kansas Statutes §§ 75-3337 to -3343a (2016). Similar to the federal RSA, Kansas’ law applies to an array of vending facilities, ranging from automatic vending machines to snack bars and cafeterias.¹⁷ It extends

the priority for blind vendors to state, city, and county property, except for townships, cities of the third class, and schools.¹⁸ It specifically authorizes operation of RSA vending machines at rest areas on interstate highways.¹⁹ Kansas also requires that new state construction and renovation projects include space for RSA vending facilities, with the exception of projects by the Department of Wildlife, Parks and Tourism, the Kansas Turnpike Authority, or by departments working on small facilities.²⁰

Kansas' state licensing agency, Vocational Rehabilitation Services (VRS), develops resources to help blind individuals obtain employment and make informed decisions about running vending facilities.²¹ The state agencies in control of specific vending properties implement the blind vendor priority at their own sites, in consultation with VRS.²²

How is the Kansas Business Enterprise Program administered and implemented?

The board of directors of the Randolph-Sheppard Vendors of Kansas (a nonprofit blind vendor organization) is tasked with electing vendors to serve on the blind vendor committee.²³ The Kansas BEP administrator works directly with this committee to run the program.²⁴ Approximately twelve vending managers in Kansas operate about ninety sites.²⁵

What advocacy groups and trade organizations support blind vendors?

National and state advocacy organizations, state commissions for the blind, and local business trade associations each offer resources and provide support to BEP participants. National groups include the National Association of Blind Merchants,²⁶ the National Council of State Agencies for the Blind,²⁷ and Randolph-Sheppard Vendors of America.²⁸ Kansas groups that support the blind include statewide organizations, such as the

Randolph-Sheppard Vendors of Kansas (which helps elect the blind vendor committee in Kansas)²⁹ and the Kansas Association for the Blind and Visually Impaired,³⁰ as well as regional groups like the Northwest Kansas Association for the Visually Impaired, Inc., and the Topeka Association for the Visually Impaired Service.³¹

What does the Randolph Sheppard Act and the Kansas blind vendor law mean for healthy vending efforts?

Blind vendor legal priority means not only that they have a competitive advantage in securing the right to operate a facility, but also that the Kansas VRS has significant influence over the terms and conditions that are included in vending permits and cafeteria contracts, including terms regarding what products to sell and, in certain cases, even what prices may be charged.³² However, participating vendors also must comply with applicable policies of the government agency that owns the property, as well as with federal, state, and local laws and regulations.³³ This would include applicable calorie labeling requirements³⁴ and policies establishing nutrition standards for food sold on public property.

Advocacy organizations for blind vendors understandably are wary of laws or policies that they fear could keep blind vendors from fully benefiting from the RSA program. At times, blind vendor groups, similar to other vendor groups, have lobbied against proposals to set nutritional standards for foods sold on state government property.³⁵ But blind vendors can also be supportive of these efforts. Fortunately, experience is showing that healthy vending initiatives can actually result in increased sales, especially when pricing, placement, and other marketing strategies are used to encourage healthier purchases. As a result, there is a growing body of resources to help governmental entities and vendors navigate through concerns to create and implement successful operations.



Garnering vendor support is important because even if a law or policy is in place, experience has shown that it can be undermined if implementation is lackluster or spotty due to lack of support from vendors, site managers, and customers. Blind vendors are powerful potential allies in healthy food initiatives and have a unique perspective to bring.

Policymakers and public health advocates can support blind vendors *and* healthier food environments.

Both supporting blind vendors in achieving and maintaining a viable livelihood *and* supporting healthier food environments for communities are important public health goals. Public health advocates

and government staff are increasingly recognizing that engaging blind vendors early on in healthy food initiatives is crucial for success. Here are some examples of approaches that other states have used:

Building bridges with blind vendors: In Indiana, the state health department developed relationships with vending machine operators before enacting a healthy vending policy. As a result, local vendors were supportive of the Department's initiative to increase healthy vending options across the state.³⁶

Finding solutions that work for everyone: There are ways to promote healthy eating and blind vendor revenues simultaneously. For example, using pricing practices to ensure that healthy options are favorably priced compared to unhealthy options is an effective way to drive purchasing trends.³⁷ Other common marketing strategies, such as making healthy options more visible and convenient to reach, and using attractive signs to draw attention to healthy products, are also effective approaches for supporting profitability. Supporters of healthy vending initiatives and vendors alike recognize that if healthy products do not sell, the policy will not be successful — this is important common ground.

Harnessing the power of compromise: In Alabama, policymakers and blind vendors compromised on a policy initiative with an initial requirement that 30% of vending machine products be healthier, with the goal of gradually moving up to 50%.³⁸

Conclusion

Successfully implementing a healthy vending policy will require government officials and public health advocates to find common ground with blind vendors. Working together, advocates and blind vendors can find ways to both promote healthy foods and economically healthy vending operations on government property.

Encouraging innovation: Vendors know their trade and the realities of the challenges they face, so their input is crucial for troubleshooting when it comes to healthy eating initiatives. In one state, a blind vendor found that key tags would work better than stickers, which did not stick well to vending machine windows.³⁹ The idea would not have become statewide practice had the vendor's practical input not been considered.

Including blind vendors in the process from the start: Nutritional standards for vending machines should be evidence-based, but they should also take into account what vendors are doing already and what products are actually available in the region through the distribution channels available to the vendor. Vendor input and buy-in to the standards and process is key, and should be sought early on. In Tennessee, the governor signed an executive order in 2010 establishing nutritional standards for vending machines on certain state executive branch properties.⁴⁰ The executive order specifically required that blind vendor representatives be included in the standard-setting process. Similarly, implementation plans should address the practical concerns of vendors and factor in adequate time for vendors to identify new distribution channels, transition their products, and acclimate customers to the changes. Vendors should be supported through communications and outreach activities, such as newsletter items, signs, surveys, and taste-tests, to promote customer buy-in and support.

Additional resources

For additional strategies on working with RSA program representatives, visit [Healthier Vending Machine Initiatives in State Facilities](#),⁴¹ a CDC resource. Additional resources are listed below.

Kansas and regional resources:

- A Kansas-based nonprofit, Healthy Kids Challenge, developed [nutrition standards](#)⁴² for communities in Kansas, including standards for vending machine foods.
- The Mid-America Coalition on Healthcare spearheaded an initiative to produce this [step-by-step guide](#) to developing a healthy worksite vending plan.⁴³
- [Eat Well Work Well](#)⁴⁴ provides guidelines and strategies for healthy vending projects, a “Vending Machine Inventory Tool,” and sample policies.
- The Iowa Health Department’s [Nutrition Environment Measures — Vending \(NEMS-V\)](#)⁴⁵ (NEMS-V) website offers many healthy vending resources, including a “nutrition standards” testing system and stories from the field.
- The Wisconsin Nutrition and Physical Activity (NPA) Program’s [Healthy Vending Machine Project](#)⁴⁶ discusses the outcomes of its own healthy vending research and provides tips on how other states and worksites can implement healthy vending policies.

Resources related to profitability of healthy vending initiatives:

- The International Food Information Council (a food industry trade group), conducts annual surveys on consumer attitudes about food and produces reports on food trends. Its [2016 consumer survey](#)⁴⁷ showed that the number

of respondents indicating that healthfulness influenced their food purchasing decisions increased compared to 2010. In contrast, the reported importance of taste and price (the number one and two factors) was slightly lower than in the Council’s 2010 survey.⁴⁸

- In this [case study](#)⁴⁹ from Chicago, implementation of a healthy vending policy in city recreation centers led to increases in average vending machine sales.
- The Association of State & Territorial Public Health Nutritionists’ [Healthy Vending Machine Sales Data](#)⁵⁰ has a collection of data and resources on healthy vending.

General healthy vending resources:

- The Center for the Science in the Public Interest (CSPI) has created fact sheets to help address some common vendor concerns, including [Why Offer Healthier Options? The Business Case](#)⁵¹ and [Financial Implications of Healthier Vending](#)⁵² (which summarize several studies and reports on the financial outcomes of healthy vending efforts).
- The American Heart Association has developed several resources to promote healthy food and beverages in worksites, including AHA’s [Healthy Workplace Food and Beverage Toolkit](#)⁵³ and AHA’s [recommended nutrition standards for workplace food procurement](#).⁵⁴
- The Bay Area Nutrition & Physical Activity Collaborative’s [Healthy Vending Machine Toolkit](#)⁵⁵ provides a step-by-step guide to developing a healthy worksite vending plan.
- The Public Health Law Center’s [Healthy Vending webpage](#)⁵⁶ has several resources to support healthier food and beverage outlets in worksites and public spaces, including [Tips for Better Vending](#)⁵⁷ and [Five Steps to Food and Beverage Success](#).⁵⁸

Last updated: June 2016

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, made possible with funding from the Kansas Health Foundation.



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Endnotes

- ¹ KATHERINE BISHOP, ERICA FRIEDMAN & MARGO G. WOOTAN, CENTER FOR SCIENCE PUB. INT., VENDING CONTRADICTIONS: SNACK AND BEVERAGE OPTIONS ON PUBLIC PROPERTY 6-7 (2014), <http://cspinet.org/vendingcontradictions.pdf>.
- ² 20 U.S.C. § 107 et seq. (2016).
- ³ *Mini-Randolph-Sheppard Acts: A 50-State Review*, PUBLIC HEALTH L. CTR. (Mar. 2014), <http://publichealthlawcenter.org/resources/mini-randolph-sheppard-acts-50-state-review>. Kansas' law is codified at KAN. STAT. ANN. § 75-3337 (2016).
- ⁴ http://www.kslegislature.org/li/b2015_16/measures/documents/sb366_enrolled.pdf.
- ⁵ Kan. S.B. 366, § 2(d) (2016).
- ⁶ 20 U.S.C. § 107e(7) (2016) (A vending facility includes “automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other ... auxiliary equipment ...”).
- ⁷ 20 U.S.C. § 107e(3) (2016) (The law defines “federal property” as including “real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service),” Washington, D.C., and U.S territories).
- ⁸ 20 U.S.C. § 107d-4 (2016).
- ⁹ *Services*, KAN. DEPT FOR CHILDREN & FAMILIES, <http://www.dcf.ks.gov/services/Pages/default.aspx> (last visited May 13, 2016). State law identifies the state licensing agency as a “division of services for the blind” within the Kansas Department for Children and Families. KAN. STAT. ANN. § 75-3339 (2016). However, in practice there is no division by that name, and the state BEP is actually run through Vocational Rehabilitation Services. Interview with Steve Leary, Bus. Enterprise Program Administrator, Kan. Vocational Rehab. Servs. (Mar. 3, 2014). This resource will follow state practice and use “VRS” instead of “the Division of Services for the Blind” and “BEP Administrator” instead of “the director of the division.”
- ¹⁰ 20 U.S.C. § 107a(c) (2016).
- ¹¹ 20 U.S.C. § 107b-1 (2016).
- ¹² *See, e.g.*, KAN. STAT. ANN. § 75-3337 (2016).
- ¹³ 34 C.F.R. §§ 395.16, 395.33, 395.34 (2016).
- ¹⁴ *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) (2016); 34 C.F.R. §§ 395.30, 395.33 (2016).
- ¹⁵ *New Hampshire v. Ramsey*, 366 F.3d 1, 28 (1st Cir. 2004).
- ¹⁶ 20 U.S.C. § 107d-3(b) (2016); 34 C.F.R. § 395.32 (2016).
- ¹⁷ KAN. STAT. ANN. § 75-3338(c) (2016).
- ¹⁸ KAN. STAT. ANN. §§ 75-3337 and 3338 (2016).
- ¹⁹ KAN. STAT. ANN. § 75-3343(a) (2016).
- ²⁰ KAN. STAT. ANN. § 75-3339(d) (2016).

- ²¹ KAN. STAT. ANN. § 75-3339 (2016); Interview with Steve Leary, Business Enterprise Program Administrator, Kansas Vocational Rehabilitative Services (Mar. 3, 2014).
- ²² KAN. STAT. ANN. § 75-3337 (2016).
- ²³ KAN. STAT. ANN. § 75-3343 (2016).
- ²⁴ Interview with Steve Leary, Business Enterprise Program Administrator, Kansas Vocational Rehabilitative Services (Mar. 3, 2014).
- ²⁵ Interview with Steve Leary, Business Enterprise Program Administrator, Kansas Vocational Rehabilitative Services (Mar. 3, 2014). These sites are primarily vending machine sites, though some are cafeteria locations or include both.
- ²⁶ NATIONAL ASS'N BLIND MERCHANTS, <http://blindmerchants.org/about> (last visited May 12, 2016).
- ²⁷ NCSAB Mission, Objectives, Position and Services, NAT'L COUNCIL ST. AGENCIES FOR BLIND, <http://www.ncsab.org/Home/Mission> (last visited May 16, 2016).
- ²⁸ RANDOLPH-SHEPPARD VENDORS OF AMERICA, <http://randolph-sheppard.org> (last visited May 12, 2016).
- ²⁹ Kan. Stat. Ann. § 75-3343 (2016).
- ³⁰ Mission Statement, KANSAS ASS'N FOR THE BLIND & VISUALLY IMPAIRED (last updated 2016), <http://www.kabvi.com/about-kabvi.html>.
- ³¹ KANSAS ASS'N FOR THE BLIND & VISUALLY IMPAIRED, KABVI AFFILIATIONS (2016), <http://www.kabvi.com/about-kabvi.html##affiliations>.
- ³² 34 C.F.R. § 395.35(c) (2014). 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 property prohibited state university from unilaterally prohibiting blind vendor from selling non-Coca Cola products, despite university's exclusive contract with Coca-Cola).
- ³³ 34 C.F.R. § 395.4(a) and 41 C.F.R. § 102-74.45(a) (2016).
- ³⁴ The federal menu labeling law requires vending machine owners and operators of at least 20 vending machines to make sure nutrition information is clearly visible for foods sold in vending machines. Vendors with fewer machines can opt in to the federal requirements. Patient Protection and Affordable Care Act, Sec. 4205 (Public Law 111-148).
- ³⁵ NAMA, CAVC and Blind Vendors Block Healthy Vending Bill, [VENDINGMARKETWATCH.COM](http://www.vending-marketwatch.com/news/10950802/nama-cavc-and-blind-vendors-block-healthy-vending-bill), <http://www.vending-marketwatch.com/news/10950802/nama-cavc-and-blind-vendors-block-healthy-vending-bill> (May 29, 2013); S. Law, *Battle for Healthy Snacks*, PORTLAND TRIBUNE (May 26, 2011), <http://portlandtribune.com/pt/9-news/7338-battle-for-healthy-snacks> (last visited Sept. 17, 2014).
- ³⁶ Association of State & Territorial Public Health Nutrition Directors. *Healthy Vending Machine Sales Data*, http://www.asphn.org/resource_read.php?resource_id=225&sid=&order=&move=&start=&realm_to_search=2&search_results_flag=1&origin=.
- ³⁷ Simone A. French et al., *Pricing and Promotion Effects on Low-Fat Vending Snack Purchases: The CHIPS Study*, 91 AM. J. PUBLIC HEALTH 112, 115 (2001).
- ³⁸ CTRS FOR DISEASE CONTROL & PREVENTION, HEALTHIER VENDING MACHINE INITIATIVES IN STATE FACILITIES, 1, 3, http://www.cdc.gov/obesity/stateprograms/pdf/healthy_vending_machine_initiatives_in_state_facilities.pdf.
- ³⁹ *Id.*
- ⁴⁰ Tenn. Exec. Order No. 69 (August 6, 2010), <http://www.tn.gov/sos/pub/execorders/exec-orders-bred69.pdf>.
- ⁴¹ http://www.cdc.gov/obesity/stateprograms/pdf/healthy_vending_machine_initiatives_in_state_facilities.pdf.
- ⁴² <http://publichealthlawcenter.org/resources/nutrition-standards-kansas-communities>.
- ⁴³ MID-AMERICA COALITION ON HEALTH CARE & CITY OF KANSAS, MO., HEALTH DEP'T, HEALTHY VENDING IN THE WORKPLACE (2012), <http://www.marc.org/Community/Public-Health/Assets/HealthyVendingResourceGuide.aspx>.
- ⁴⁴ <http://www.eatwellworkwell.org/vending.htm>.
- ⁴⁵ <http://www.nems-v.com>.
- ⁴⁶ <https://www.dhs.wisconsin.gov/publications/p00980.pdf>.

- 47 <http://www.foodinsight.org/articles/2016-food-and-health-survey-food-decision-2016-impact-growing-national-food-dialogue>.
- 48 http://www.foodinsight.org/sites/default/files/2016_executivesummary_final_web.pdf, at p. 4.
- 49 Maryann Mason et al., *Working With Community Partners to Implement and Evaluate the Chicago Park District's 100% Healthier Snack Vending Initiative*, 11 PREVENTING CHRONIC DISEASE, Aug. 2014, at 4, http://www.cdc.gov/pcd/issues/2014/pdf/14_0141.pdf.
- 50 http://www.asphn.org/resource_read.php?resource_id=225&sid=&order=&move=&start=&realm_to_search=2&search_results_flag=1&origin=.
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