

# STATE OF NEW YORK

---

7545

## IN SENATE

April 10, 2008

---

Introduced by Sen. MORAHAN -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend chapter 415 of the laws of 1913 relating to establishing a state commission for the blind and visually handicapped, in relation to prescribing the powers, duties, responsibilities and functions of the commissioner of general services and other state and public officials; and to repeal paragraphs 2 and 3 of subdivision d of section 11-a of such chapter relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (E) of paragraph 4 of subdivision c of section  
2 11-a of chapter 415 of the laws of 1913, relating to establishing a  
3 state commission for the blind and visually handicapped, as added by  
4 chapter 693 of the laws of 1992, is amended to read as follows:

5 (E) provide to any blind licensee dissatisfied with any action arising  
6 from the operation or administration of the vending facility program an  
7 opportunity for a fair hearing, and agree [~~to submit the~~] that any  
8 grievances of any blind licensee not otherwise resolved by such hearing  
9 may be submitted by the blind licensee to [arbitration as provided in  
10 subdivision d of this section] the United States department of education  
11 for arbitration in accordance with federal statute.

12 § 2. Paragraph 1 of subdivision d of section 11-a of chapter 415 of  
13 the laws of 1913, relating to establishing a state commission for the  
14 blind and visually handicapped, as added by chapter 693 of the laws of  
15 1992, is amended to read as follows:

16 [~~1-~~] Any blind licensee who is dissatisfied with any action arising  
17 from the operation or administration of the vending facility program may  
18 submit to the commission a request for a full evidentiary hearing which  
19 shall be conducted by the commissioner or the commissioner's designee.  
20 If such blind licensee is dissatisfied with any action taken or decision  
21 rendered as a result of such hearing, he or she may file a complaint  
22 with the [~~commissioner~~] United States department of education. [~~Such~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD15334-01-8

1 ~~complaint shall be accompanied by any supporting documents and a copy of~~  
 2 ~~the decision or a statement of the action challenged.]~~

3 § 3. Paragraphs 2 and 3 of subdivision d of section 11-a of chapter  
 4 415 of the laws of 1913, relating to establishing a state commission for  
 5 the blind and visually handicapped, are REPEALED.

6 § 4. This act shall take effect immediately.

---

**NEW YORK STATE SENATE  
 INTRODUCER'S MEMORANDUM IN SUPPORT  
 submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S7545

**SPONSOR:** MORAHAN

**TITLE OF BILL:**

An act to amend chapter 415 of the laws of 1913 relating to establishing a state commission for the blind and visually handicapped, in relation to prescribing the powers, duties, responsibilities and functions of the commissioner of general services and other state and public officials; and to repeal paragraphs 2 and 3 of subdivision d of section 11-a of such chapter relating thereto

**PURPOSE:**

This bill would clarify that a blind licensee participating in the Commission on the Blind and Visually Handicapped (CBVH) vending facility program who wishes to grieve the result of a state-level fair hearing through the New York State Office of Children and Family Services (OCFS) pertaining to his or her license must apply to the United States Department of Education for arbitration of the grievance.

**SUMMARY OF PROVISIONS:**

Sections 1 and 2 of this bill would amend subdivisions (c) and (d) of § 11-a of Chapter 693 of the Laws of 1992, as contained in Unconsolidated Laws § 8714-a, to provide that a blind vendor participant in the Business Enterprise Program (BEP) operated by the CBVH may submit a grievance not resolved by a state level administrative hearing to the United States Department of Education (DOE).

Section of this bill would repeal paragraphs (2) and (3) of subdivision (d) of § 11-a of Chapter 693 of the Laws of 1992, as contained in Unconsolidated Laws § 8714-a(d) (2) and (3), referencing state level arbitration procedures that are preempted by federal law.

Section 4 of this bill would provide for an immediate effective date.

**EXISTING LAW:**

Unconsolidated Laws § 8714-a authorizes a blind licensee participating

in the vending facility program operated by CBVH, who is dissatisfied with the result of an administrative hearing provided by OCFS, to request arbitration through OCFS with respect to the licensee's grievance.

However, a federal law, the Randolph-Sheppard Act (20 U.S.C. § 107 et seq), contains arbitration provisions that preempt the arbitration provided through OCFS pursuant to Unconsolidated Laws § 8714-a.

**LEGISLATIVE HISTORY:**

A substantially similar proposal pertaining to blind licensees of the CBVH vending program was introduced in the Assembly in 1997 (A.8421). The proposal was resubmitted in 1999 (A.8412/S.4267), but failed to pass either house. This legislation was also introduced in 2005 (S.5191), but did not pass.

**STATEMENT IN SUPPORT:**

Among the functions of CBVH is the operation of a BEP for blind vendors CBVH receives federal funding for this program through the United States DOE, Rehabilitation Services Administration. However, a federal law, the Randolph-Sheppard Act, requires that grievances be submitted to the United States DOE, Rehabilitation Services Administration for arbitration.

This proposal therefore amends Unconsolidated Laws § 8714-a governing the BEP to reflect that federal statute and regulation do not permit a vendor to grieve the result of an administrative hearing to an arbitration panel convened by the CBVH, as the law currently provides. As the statutory procedure established in New York does not comply with the federal mandate, the United States DOE could penalize New York State by eliminating federal funding to CBVH. In addition, the statutory authority for potential arbitrations at both the state and federal levels is confusing. Currently requests for arbitration are forwarded to the United States DOE for arbitration at the federal level as required by federal law, despite the contradictory State requirement Substitution of the federal arbitration process for State arbitration has not negatively affected blind vendors as they still receive appellate level due process. However, any loss of federal funding to CBVH because New York law is non-compliant with federal requirements would have a notably negative effect on blind vendors. This bill would merely conform an unenforceable state provision to federal law, and in so doing, remove uncertainty and confusion from the arbitration process.

**BUDGET IMPLICATIONS:**

The failure to amend New York state law pertaining to the CBVH blind licensee vending program could potentially jeopardize continued federal reimbursement for CVBH rehabilitation services expenditures.

**EFFECTIVE DATE:**

This legislation would take effect immediately.

---