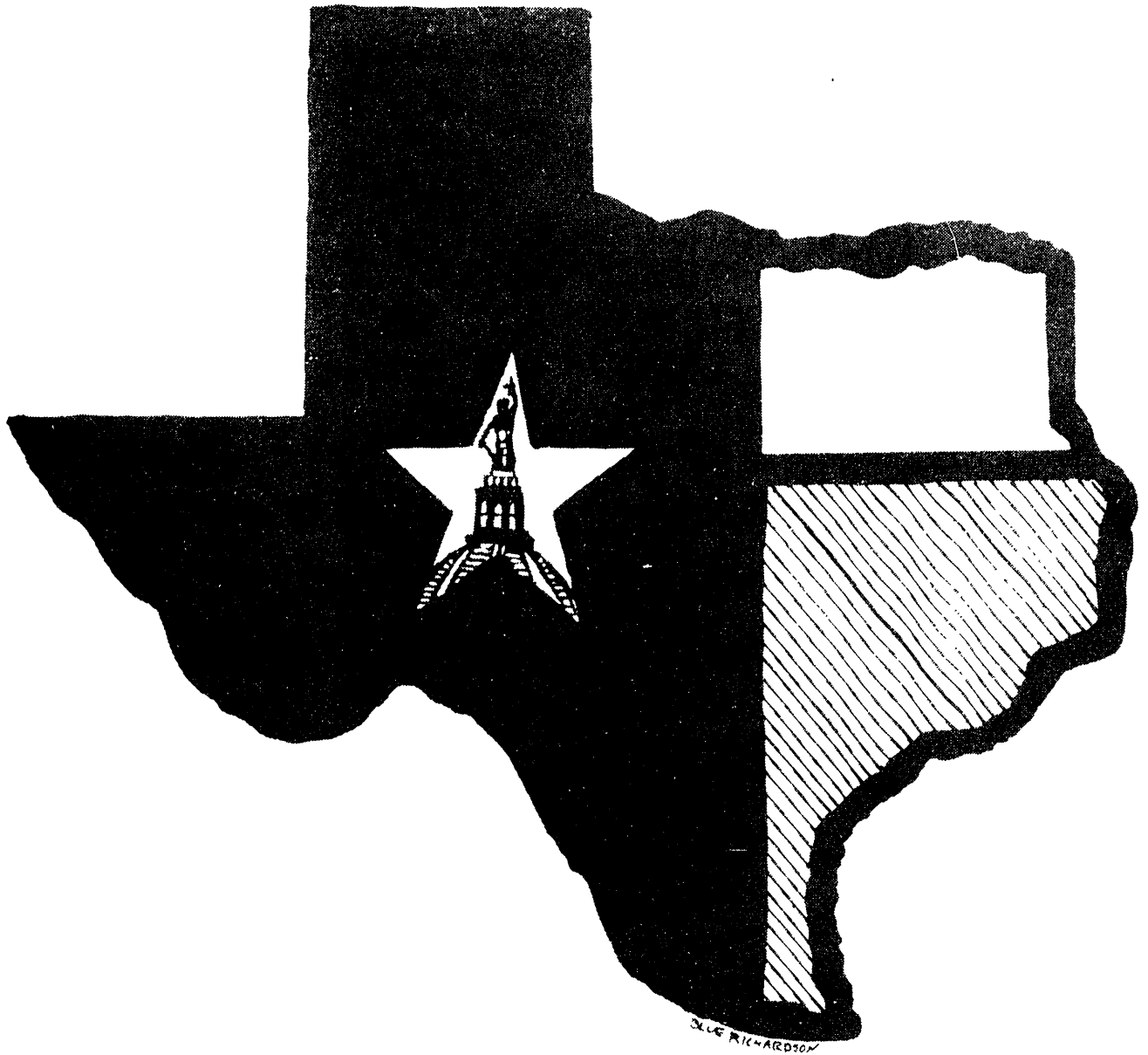


# Texas Register

Volume 12, Number 91, December 8, 1987

Pages 4553-4603



## Highlights

The **Texas Department of Mental Health and Mental Retardation** adopts on an emergency basis new sections concerning client abuse and neglect in TDMHMR facilities. Effective date - November 25, 1987. . . **page 4560**

The **Office of Consumer Credit Commissioner** proposes a new section concerning notice and processing periods for permit applications.

Earliest possible date of adoption - January 8, 1988 . . . . . **page 4564**

The **Texas Board of Architectural Examiners** propose sections concerning the administrative structure of the board, definition of terms, and explanation of officer duties. Earliest possible date of adoption - January 8, 1988 . . . **page 4565**

Office of  
the Secretary  
of State

## Texas Register

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- Proposed Rules--rules proposed for adoption
- Withdrawn Rules--rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
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27.15 is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).



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# Attorney General

**Description of attorney general submissions.** Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

## Opinions

**JM-821 (RQ-1225).** Request from Mike Toomey, Chairman, Judiciary Committee, Texas House of Representatives, Austin, concerning whether a volunteer fire department is subject to the Open Records Act, Article 6252-17a.

**Summary of Opinion.** The Cy-Fair Volunteer Fire Department, a nonprofit corporation, is a governmental body within the meaning of the Texas Open Records Act, §2(1)(F), Texas Civil Statutes, Article 6252-17a, to the extent that it is supported by public funds received pursuant to its contract with the Harris County Rural Fire Prevention District Number 9.

TRD-8710761

**JM-822 (RQ-1282).** Request from Curtis Tunnell, Executive Director, Texas Historical Commission, Austin, concerning whether the 180-day waiting period set forth in the Government Code, §442.008, may be waived.

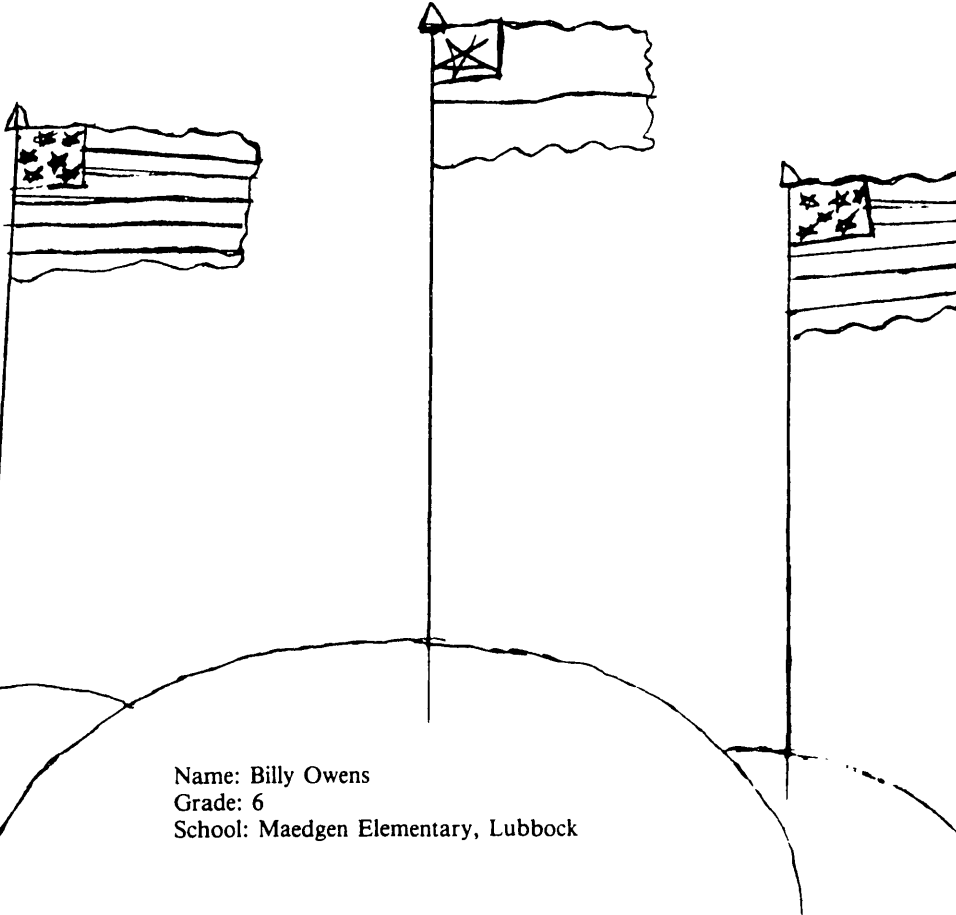
**Summary of Opinion.** The Texas Historical Commission is not authorized to waive the 180-day waiting period set forth in the Government Code, §442.008, governing the preservation of historic courthouses.

TRD-8710760

**JM-823 (RQ-1217).** Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether attorneys fees are in certain circumstances subject to sales tax.

**Summary of Opinion.** The services of a lawyer are not taxable services under the Tax Code, Chapter 151, unless the comptroller determines that the lawyer is not providing legal services and is acting solely as a debt collector.

TRD-8710759



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# Emergency

## Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

**Symbology in amended emergency rules.** New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

### TITLE 16. ECONOMIC REGULATION

#### Part IV. Texas Department of Labor and Standards Chapter 69. Manufactured Housing Division General Requirements

##### ★ 16 TAC §§69.118, 69.129-69.132, 69.135

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of new §§69.118, 69.129-69.132, and 69.135 for a 30-day period effective December 18, 1987. The text of the new §§69.118, 69.129-69.132, and 69.135 was originally published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2887).

Issued in Austin, Texas, on November 30, 1987

TRD-8710721      Vernon C. Mayfield  
General Counsel  
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Labor and Standards

Effective date: December 18, 1987  
Expiration date: January 17, 1988  
For further information, please call  
(512) 463-3128.



##### ★ 16 TAC §§69.121, 69.123-69.125

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of amended §§69.121, and 69.123-69.125 for a 30-day period effective December 18, 1987. The text of the amended §§69.121, and 69.123-69.125 was originally published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2889).

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(512) 463-3128.



##### ★ 16 TAC §§69.122, 69.127, 69.128

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of repealed §§69.122, 69.127, and 69.128 for a 60-day period effective December 18, 1987. The text of the repealed §§69.122, 69.127, and 69.128 was originally published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2892).

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For further information, please call  
(512) 463-3128



### Titling

##### ★ 16 TAC §§69.201, 69.202, 69.205, 69.207, 69.208

The Texas Department of Labor and Standards is renewing the effectiveness of the emergency adoption of amended §§69.201, 69.202, 69.205, 69.207, and 69.208 for a 60-day period effective December 22, 1987. The text of the amended §§69.201, 69.202, 69.205, 69.207, and 69.208 was originally published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2892).

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For further information, please call  
(512) 463-3128



### TITLE 25. HEALTH SERVICES

#### Part II. Texas Department of Mental Health and Mental Retardation Chapter 404. Protection of Clients and Staff

##### Subchapter A. Client Abuse and Neglect in TDMHMR Facilities

##### ★ 25 TAC §§404.1-404.14

The Texas Department of Mental Health and Mental Retardation adopts on an emergency basis new §§404.1-404.14, concerning client abuse and neglect in TDMHMR facilities.

The new sections are adopted on an emergency basis to provide immediate improvements in methods used to investigate allegations of client abuse and neglect. The emergency adoption is made contemporaneously with the regular proposal of the same sections.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§404.1. Purpose.** The purpose of this subchapter is to identify and prohibit client abuse and neglect by employees of the Texas Department of Mental Health and Mental Retardation and to prescribe procedures for its report and prevention.

**§404.2. Application.** The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation.

**§404.3. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Affiliate**--Any school, organization, or entity associated in a working alliance with a facility (by contract).

**Agent**--Any individual not employed by the facility but working under the auspices of the facility, such as volunteers, consultants, students, etc.

**Child**--A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority



removed for general purposes.

**Client**—Any person receiving services from the department, including those persons on furlough, on pass, or on unauthorized departure status who are still carried on the rolls of the facility.

**Consultant**—A person with expertise in conducting investigations, with training, experience, and demonstrated competence in the area of investigation.

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Designee**—A staff member immediately available who is temporarily appointed to fulfill duties and assume the responsibilities of the superintendent.

**Disabled person**—A person with a mental, physical, or developmental disability between 18 and 65 years of age.

**Elderly person**—A person 65 years of age or older.

**Exploitation**—The illegal or improper act or process of an employee using the resources of a client for monetary or personal benefit, profit, or gain.

**Facility**—Any institution, program, or service operated by the department.

**Furlough**—Any approved leave of absence from a facility.

**Head of the facility**—The superintendent or director of a department facility.

**Negligence**—The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do something that a person of ordinary prudence would have done under the same or similar circumstances.

**Nonserious physical injury**—Any injury determined not to be serious by the physician who examines the client. Examples of nonserious injury include, but are not limited to, the following: superficial laceration, contusion, or abrasion.

**Retaliatory action**—Any action such as, but not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, censure, or any other action, the purpose of which is to inflict emotional or physical harm or inconvenience to an employee or client who has reported client abuse or neglect.

**Serious physical injury**—An injury determined to be serious by the physician who examines the client. Examples of serious injury include, but are not limited to, the following: fracture; dislocation of any joint; internal injury; contusion larger than 2½ inches in diameter; concussion; first, second, or third degree burn; or any laceration requiring sutures.

**§404.4. Client Abuse and Neglect Defined.** Client abuse and neglect shall be classified as follows in accordance with the "Procedures and Techniques for Investigation of Abuse and Neglect," which is herein adopted by reference as Exhibit A and which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) Class I abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act which caused or may have caused serious physical injury to a client. Without regard to injury, any sexual activity between an employee and a client will be considered to be Class I abuse.

(2) Class II abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act which caused or may have caused nonserious physical injury to a client; or exploitation.

(3) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a client, or threaten a client with physical or emotional harm, or any act which vilifies, degrades, or threatens a client with physical or emotional harm.

(4) Neglect means the negligence of any employee which caused or may have caused any physical or emotional injury to a client. Examples of neglect shall include, but are not limited to, failure to carry out a prescribed individual program plan or treatment plan; failure to provide adequate nutrition, clothing, or health care; or failure to provide a safe environment.

**§404.5. Prohibition Against Client Abuse and Neglect.**

(a) Client abuse or neglect by department employees is prohibited and shall be grounds for disciplinary action.

(b) Client abuse shall not include:

(1) the proper use of restraints or seclusion (Subchapter F of Chapter 405 of this title (relating to Restraint and Seclusion in Mental Health Facilities) and Subchapter HH of Chapter 405 of this title (relating to Restraint and Seclusion in Mental Retardation Facilities)), the approved application of behavior modification techniques (Subchapter G of Chapter 405 of this title (relating to Behavior Therapy Programs)), or other actions taken in accordance with the rules of the department; or

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to himself, clients, other persons, or property, if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances.

**§404.6. Responsibilities of All TDMHMR Employees.**

(a) It is the obligation of each employee who has knowledge of, or is involved in, client abuse or neglect to make an immediate verbal report and a written incident and/or, if appropriate, client injury report within two hours of the incident to the head of the facility or his designee. Employees failing to make such reports within the allotted time period without sufficient justification to the head of the facility or his designee shall be considered in violation of this subsection and subject to disciplinary action and possible criminal prosecution.

(b) Any person who is of the belief that any abuse or neglect has occurred to a client may make his or her concerns known to the public responsibility committee under Subchapter P of Chapter 403 of this title (relating to Public Responsibility Committees).

**§404.7. Responsibilities of Heads of Facilities.**

(a) Administrative responsibilities. The head of the facility or in his absence his designee shall be responsible for determining whether the employee accused of client abuse or neglect shall be granted emergency leave immediately after the reporting of the suspected client abuse or neglect pending investigation, pursuant to the department's internal rules governing emergency leave, contained in its Personnel Manual.

(b) Reporting responsibilities. The head of the facility or in his absence his designee shall report as follows.

(1) All incidents of client abuse or neglect shall be reported to:

(A) Client abuse committee. Immediately after receiving the report of alleged client abuse or neglect, the head of the facility shall notify the chairperson or acting chairperson of the client abuse committee.

(B) Parents/guardians/family. Immediately if possible and in no case later than 24 hours after the client abuse or neglect incident has been reported, the parents, guardian, spouse, or other appropriate relative of a client who has allegedly been abused or neglected shall be notified. The persons contacted shall also be informed of the results of the final investigation. Such notification will be made unless specifically prohibited by law (Subchapter L of Chapter 405 of this title (relating to Client Rights—Mental Health Facilities)), or by rules of the department relating to confidentiality.

(C) Director, Office of Client Services and Rights Protection, Central Office

(i) Upon completion of the investigation, the head of the facility shall submit to the director of client services and rights protection two copies of the client abuse/neglect report, which is adopted by reference as Exhibit B, as well as two copies of the investigative report and all supporting documents. Copies of Exhibit B may be obtained from Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711. Investigative reports shall include a statement of the allegation, a summary of the investigative methodology, the findings of fact, an analysis of the evidence, the client abuse/neglect committee's finding regarding whether abuse occurred, and any concerns and recommendations for corrective and preventive actions.

(ii) The head of the facility shall submit a final report of suspected child abuse and neglect in a child care facility to the Office of Client Services and Rights Protection to be forwarded, as required, to the

Office of Youth Care Investigation, Attorney General's Office, which child abuse is investigated. Copies of the reports to be filed as required by reference as Exhibit C shall be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(D) Law enforcement agencies. When the head of a facility has reason to believe, after appropriate investigation, that any client-abuse related crime has been committed, the head of the facility shall report the occurrence to local law enforcement agencies.

(C) Disciplinary responsibilities. The head of the facility, or, in his absence, his designee, shall be responsible for taking prompt and proper disciplinary action when a charge of client abuse or neglect is confirmed.

(1) Disciplinary action shall be based on criteria including, but not limited to:

(A) the seriousness of the client abuse and/or neglect;

(B) the circumstances surrounding the event; and

(C) the employee's record.

(2) When the head of the facility determines that client abuse or neglect has occurred, he or she shall take the following disciplinary action:

(A) Class I abuse. The employee shall be dismissed from employment.

(B) Class II abuse. If the act of abuse is the employee's first violation, the employee shall be placed on suspension for up to 10 days, demoted, or dismissed from employment. If the act of abuse is the employee's second violation, that employee shall be dismissed from employment.

(C) Class III abuse. If the act of abuse is the employee's first violation, the employee shall receive a written reprimand which shall become a part of the employee's personnel file and may be placed on suspension for up to 10 days. If the act of abuse is the employee's second violation, that employee shall be placed on suspension for up to 10 days, demoted, or dismissed from employment.

(D) Neglect. The employee shall receive a written reprimand, shall be placed on suspension for up to 10 days, demoted, or dismissed from employment.

(3) When the head of a facility takes disciplinary action against an employee based on client abuse or neglect, the head of a facility shall notify the dismissed employee in writing of any right to a grievance hearing which such employee may have under the department's internal rules contained in the directive entitled "Employee Grievances" (Directive 29).

#### §404.8. Client Abuse Committee

(a) Appointment. The head of a facility shall appoint a multi-disciplinary committee or committees to assist in the investigation of alleged incidents of client abuse and/or neglect. The committee shall be

created by the Client Abuse and Neglect Committee.

(b) Composition. The committee shall consist of five persons.

(1) Four members of the committee shall be staff persons representative of the professional staff, administrative staff, and direct care staff. One member of the committee shall also be a member of the public responsibility committee for the facility.

(2) One person shall be designated to act as chairperson of this committee and shall be required to maintain all records of investigations conducted by the committee. When the chairperson is away from the facility, one of the committee members shall be appointed acting chairperson.

(c) Terms. The term of membership shall be one year. The head of the facility may reappoint the same staff members for more than one term.

(d) Consultants. The head of the facility may retain a consultant for the purpose of assisting the committee in conducting investigations pursuant to this rule.

(e) Responsibilities. It shall be the duty of the committee:

(1) to fully investigate alleged incidents of client abuse or neglect within five working days from the date the alleged incident is reported to the chairperson or acting chairperson. All investigations shall begin immediately. If the committee is unable to complete its investigation within five working days, written justification will be submitted to the head of the facility for approval or disapproval.

(A) The preliminary investigation, including witness statements and evidence gathering, may be conducted by one member designated by the committee, a consultant, or the facility investigator. If the preliminary investigation indicates that the allegation is obviously without merit, the investigator may be closed after the preliminary investigative report has been reviewed and signed by the chairperson of the committee, a public responsibility committee member, and the head of the facility. Ten percent of all preliminary investigations which are closed must be submitted for review by the chairperson to the full committee to ensure that all investigations are screened. A copy of all such preliminary investigations shall be sent to the Office of Client Services and Rights Protection.

(B) Investigative procedures outlined in Exhibit A are to be followed in all investigations. These procedures must include:

(i) photographs of all injuries as soon as possible after discovery of the injury. One photograph shall be submitted with the investigative report sent to the Office of Client Services and Rights Protection, Central Office; and

(ii) the physician's exam and treatment of abuse-related injuries which shall be documented on the client injury

report and attached to the investigative report submitted to the Office of Client Services and Rights Protection, Central Office. The physician's remarks should include the injury's cause, age, and treatment, as well as the timing of the medical exam with regard to the date the injury was received.

(C) The chairperson is responsible for monitoring the implementation of the committee's recommendations regarding preventive measures and for the evaluation of their effectiveness. A quarterly report detailing these findings will be submitted to the head of the facility; and

(2) to report to the head of the facility whether it is of the opinion that there is cause to believe that client abuse or neglect has occurred in the incident investigated. Such opinion is not binding on the head of the facility.

§404.9. Responsibilities of the Office of Client Services and Rights Protection. The Office of Client Services and Rights Protection shall:

(1) monitor statistical trends in abuse and neglect;

(2) review all abuse and neglect investigations;

(3) determine closure on all investigations;

(4) report all allegations of child abuse to the Office of Youth Care Investigation in the attorney general's office;

(5) report all allegations of abuse involving adult clients to the Texas Department of Human Services (DHS); and

(6) make appropriate reports of abuse regarding registered nurses or medical doctors to the respective boards of examiners.

§404.10. Appeals Process. A complainant who makes an allegation of client abuse or neglect and wishes to appeal the findings shall request a review of the completed investigation by notifying the Office of Client Services and Rights Protection, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) If the incident involves a client under the age of 18, the complainant may further request a review from the Office of Youth Care Investigation, Attorney General's Office, P.O. Box 12548, Austin, Texas 78711.

(2) If the incident involves a client 18 years or older, the complainant may further contact the Office of Adult Protective Services, Department of Human Services, P.O. Box 2960, Austin, Texas 78769.

§404.11. Prohibition Against Retaliatory Action.

(a) Any employee or client who in good faith reports client abuse, exploitation, or neglect shall not be subjected to retaliatory action by any employee of the department or any person affiliated with an employee of the department.

(b) Any person who is subjected to

retaliatory action upon making a report of client abuse, or whose report is ignored without cause, shall immediately contact the head of the facility. Such person may also contact the Office of Client Services and Rights Protection, Central Office, at the toll free number 1-800-252-8154.

(c) Any employee found guilty of retaliatory action may be subject to disciplinary action.

**§404.12. Staff Training in Prevention of Client Abuse and/or Neglect.**

(a) This subchapter concerning client abuse shall be thoroughly and periodically explained to all employees of each facility as follows.

(1) All new employees shall receive instruction on the content of this subchapter during their orientation training. Acknowledgment of this instruction shall be certified by the employee and filed in his or her personnel file. See Exhibit D, which is adopted by reference and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(2) Orientation shall include not less than thorough explanation of the definitions contained in these sections, including the categories or classes of client abuse or neglect, the disciplinary consequences of client abuse or neglect, and the procedures for reporting incidents of client abuse or neglect.

(3) Within 60 days after the effective date of this subchapter, all current employees shall be oriented to the contents of this subchapter by the head of the facility or by his or her designee. Acknowledgment of this instruction shall be certified by the employee and filed in his or her personnel file. See Exhibit D, which is adopted by reference and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(b) Those employees in frequent contact with clients shall receive additional instruction on the prevention and therapeutic management of aggressive, combative behavior or similar volatile situations as a unit of training within the employee's six months probationary period of employment. Training shall comply with training standards promulgated by the department.

(c) All supervisory personnel shall have a continuing responsibility to keep employees currently informed on rules governing client abuse or neglect and shall insure that each employee receives training on the total content of this subchapter not less than once each calendar year. Such training shall be reported to the facility office for staff development.

(d) Instructional materials, audio-visual and/or other training aids concerning this subchapter shall be approved by the Office of Training and Staff Resources, Central Office, in concurrence with central office legal services staff and central office client

services and rights protection staff.

(e) A record shall be kept by the facility office for staff development on each employee receiving orientation, annual training, or additional instruction in compliance with this section, including the date training was provided and the name of the individual conducting the training.

**§404.13. Distribution.**

(a) The provisions of this subchapter shall be distributed to:

- (1) members of the Texas Board of Mental Health and Mental Retardation;
- (2) deputy commissioners;
- (3) directors of central office;
- (4) superintendents and directors of all department facilities;
- (5) the Texas Association for Retarded Citizens;
- (6) the Texas Association on Mental Deficiency;
- (7) the Parent Association for the Retarded of Texas;
- (8) the Texas Association for Mental Health;
- (9) the attorney general of Texas;
- (10) the Governor's Office of Youth Care Investigation;
- (11) the Texas Department of Health;
- (12) the Texas Department of Human Services;
- (13) the Texas Youth Council; and
- (14) the Alliance for Mental Recovery.

(b) The head of each facility shall be responsible for duplicating and disseminating copies of this subchapter to:

- (1) appropriate staff; and
- (2) any client, employee, or other person desiring a copy.

(c) The head of each facility shall be responsible for prominently displaying copies of this subchapter at nursing stations and on bulletin boards within each facility.

**§404.14. References.** Reference is made to the following statutes, rules of the department, and attorney general opinions:

- (1) Texas Civil Statutes, Article 5547-202, §2.12;
- (2) Texas Civil Statutes, Article 5547-87;
- (3) Texas Civil Statutes, Article 695c-2, §9;
- (4) Texas Penal Code, Chapters 19 and 21, §§22.01, 22.02, 22.04, 22.05, 22.07, 22.08, and 22.10;
- (5) Texas Family Code, §§11.01, 34.01, 34.02, and 34.03;
- (6) within this title:

(A) Subchapter P of Chapter 403 of this title (relating to Public Responsibility Committees);

(B) Subchapter G of this chapter (relating to Unusual Incidents at Institutions);

(C) Subchapter F of Chapter 405 of this title (relating to Restraint and Seclusion in Mental Health Facilities);

(D) Subchapter G of Chapter 405 of this title (relating to Behavior Therapy Programs);

(E) Subchapter J of Chapter 405 of this title (relating to Client Rights—Mental Health Facilities);

(F) Subchapter III of Chapter 405 of this title (relating to Restraint and Seclusion in Mental Retardation Facilities);

(7) the department's internal rules governing:

(A) emergency leave, contained in the *TDMHMR Personnel Manual*;

(B) suspension, demotion, and reduction in salary, contained in the *TDMHMR Personnel Manual*;

(C) dismissal for cause, contained in the *TDMHMR Personnel Manual*; and

(D) employee grievances, contained in the directive entitled "Employee Grievances";

(8) Attorney General Opinion Numbers H-237 (1974), H-986 (1977), and H-494 (1975);

(9) Texas Civil Statutes, Article 5547-300; and

(10) the Human Resources Code, Chapter 48.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710651

Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date November 25, 1987

Expiration date March 24, 1988

For further information, please call

(512) 465-4670

**TITLE 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

**Chapter 3. Tax Administration  
Subchapter O. State Sales and Use Tax**

**★ 34 TAC §3.295**

The Office of the Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.295 for a 60-day period effective December 1, 1987. The text of the amended §3.295 was originally published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2537).

Issued in Austin, Texas, on December 1, 1987.

TRD-8710795

Wade Anderson  
Rules Coordinator  
Office of the  
Comptroller of Public  
Accounts

Effective date December 1, 1987

Expiration date January 30, 1988

For further information, please call

(512) 463-4004

# Proposed

## Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. Also, in the case of substantive rules, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

### TITLE 7. BANKING AND SECURITIES

#### Part V. Office of Consumer Credit Commissioner

#### Chapter 1. Consumer Credit Commission

#### Subchapter B. Miscellaneous

#### Notice and Processing Periods for Permit Applications

#### ★ 7 TAC §1.304

The Office of Consumer Credit Commissioner proposes new §1.304, concerning notice and processing periods for permit applications. The new section establishes notice requirements for processing periods to be followed by the Office of Consumer Credit Commissioner in relation to the acceptance, processing, and granting of a license issued by the Office of Consumer Credit Commissioner to operate as a licensed lender, a licensed pawnshop, or a licensed pawnshop employee.

Al Endsley, consumer credit commissioner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be new administrative costs of \$6,000 for each year in 1988-1992. These costs include, but are not limited to, the issuing of notice letters, the tracking of each permit application to insure established periods are not violated, and the defending, hearing, and disposing of appeals regarding violations of this section. There will be no effect on local government or small businesses.

Mr. Endsley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be full compliance by the Office of Consumer Credit Commissioner with notice and processing periods for permit applications. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Al Endsley, Office of Consumer Credit Commissioner, 2601 North Lamar, Austin, Texas 78705, within 30 days after the date of this publication.

The new section is proposed under Acts 1987, 70th Legislature, page 3730, Chapter 375, effective August 31, 1987, which mandates that the Office of Consumer Credit Commissioner establish notice and processing periods for permit applications. Section 3(b) and §(7) of Acts, 1987, 70th Legislature, page 3730, Chapter 375, require the Office of Consumer Credit Commissioner to publish certain data with this proposed section. The agency must state the maximum, minimum, and median times for processing a permit, from the date the initial application was received to the date of the final permit decision. Initial data must be based on applications received and for which final permit decisions were made during the period beginning June 1, 1987, and ending August 31, 1987. In accordance with this statutory mandate, the agency's maximum time for processing a regulated loan license was 204 days. The agency's minimum time for processing a regulated loan license was five days. The agency's median time for processing a regulated loan license was 50 days. The agency's maximum time for processing a pawnshop license was 252 days. The agency's minimum time for processing a pawnshop license was 32 days. The agency's median time for processing a pawnshop license was 73 days. The agency's maximum time and minimum time for processing a pawnshop employee license is not available. The agency's median time for processing a pawnshop employee license was an estimated 30 days. The determination of the maximum, minimum, and median times required by the agency to process a permit as published in the proposed section shall, insofar as is reasonable, be determined by the maximum, minimum, and median times demonstrated by the times calculated during the period beginning June 1, 1987, and ending August 31, 1987.

**§1.304. Notice and Processing Periods for Permit Application.** In order to minimize delays which hamper small business and other enterprises, this section establishes periods within which the Office of Consumer Credit Commissioner shall review and process permit applications efficiently and provides for an appeal process should the agency violate these periods.

(1) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Agency—The Office of Consumer Credit Commissioner.

(B) Applicant—Any person that has made a permit application with the Office of Consumer Credit Commissioner.

(C) Person—Any individual, proprietorship, partnership, association, cooperative, corporation, nonprofit organization, joint venture, trust, association, and any other organization, however organized, required to obtain one or more permits.

(D) Commissioner—The consumer credit commissioner.

(E) Permit—Any license, certificate, registration, permit, or other form of authorization issued by the Office of Consumer Credit Commissioner that must be obtained by a person to engage in a particular business regulated by the Office of Consumer Credit Commissioner.

(2) Computation of time. In computing any period of time prescribed or allowed by this section, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(3) Manner of notice. Written notice that an application or form is complete and accepted for filing or is deficient and not accepted for filing must be mailed to the applicant or delivered by such means as will reasonably provide actual notice. Written notice that an application is complete and accepted for filing shall not be required under this section if an application is approved and a permit is issued during the notice period. After one written notice that an application is deficient and not accepted for filing has been issued, another is not required for an application resubmitted in whole or in part, but the agency may notify the applicant, in any manner, of deficiencies in the application.

(4) Notice to applicant. Within 14 days from receipt of an application for a permit, the agency shall determine an application to be complete or deficient and immediately issued written notice to the applicant regarding the status of the application.

(A) Complete application. The written notice for a complete application shall state that the application is complete

and accepted for filing and shall inform the applicant that within 60 days after date of notice, the agency shall grant the permit or give notice of denial to the applicant.

(B) Deficient application. The written notice for a deficient application shall state that the application is not complete and set out the specific additional information that is required for completion. After one written notice of deficiency has been issued, another is not required for an application resubmitted in whole or in part with deficiencies, and the agency may notify the applicant, in any manner, of deficiencies in the application.

(5) Processing of application. Within 60 days after receipt of a complete application the agency shall grant the permit or give notice of denial to the applicant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 1, 1987.

TRD-8710820      Al Endsley  
Commissioner  
Office of Consumer  
Credit Commissioner

Earliest possible date of adoption  
January 8, 1988  
For further information, please call  
(512) 479-1280



## TITLE 22. EXAMINING BOARDS

### Part I. Texas Board of Architectural Examiners Chapter 1. Architects Subchapter A. Rules Affecting Board

#### ★ 22 TAC §§1.1-1.13

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §§1.1-1.13, concerning the conduct and procedures for board business, including records of the board. These repeals allow the board to add five new sections explaining the purpose of the sections; referencing the legal authority for the sections; adding the definitions for terms used in the sections; and renumbering the sections which are repealed.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Norris also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be better communication and understanding with the public as a result of establishing new sections. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The repeals are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

- §1.1. *Office.*
- §1.2. *Person for Service of Process.*
- §1.3. *Meetings and Notices Thereof.*
- §1.4. *Officers and Employees.*
- §1.5. *Examining Committee.*
- §1.6. *Official Seal.*
- §1.7. *Attorneys.*
- §1.8. *Roberts' Rules of Order.*
- §1.9. *Quorum.*
- §1.10. *Signing Certificates.*
- §1.11. *Official Records.*
- §1.12. *Expenses.*
- §1.13. *N.C.A.R.B.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 2, 1987

TRD-8710701      Robert H. Norris  
Executive Director  
Texas Board of  
Architectural  
Examiners

Earliest possible date of adoption  
January 8, 1988  
For further information, please call  
(512) 458-1363



### Subchapter A. Scope; Definitions

#### ★ 22 TAC §§1.1-1.18

The Texas Board of Architectural Examiners proposes new §§1.1-1.18, concern-

ing the administrative and functional structure of the board. These new sections explain the purpose of the sections; reference the legal authority for the sections; show the definitions for terms used in the sections; and explain the officers and duties of the board.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be public understanding of the purpose of the sections; citation of reference for the legal authority for the sections; and a clear understanding of the terms in the sections. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.1. *Purpose.* The rules and regulations of the Texas Board of Architectural Examiners are set forth for the purpose of interpreting and implementing Texas Civil Statutes, Article 249a, the regulation of the practice of architecture in Texas; establishing the board and conferring upon it responsibility for registration of architects and the regulation of the practice of architecture.

§1.2. *Citation.* The rules and regulations shall be known, and may be cited, as rules of the board.

§1.3. *Board's Regulatory Authority.* The cited rules of the board are promulgated under authority of the cited statute, Texas Civil Statutes, Article 249a, and shall be in conformity with applicable provisions of the Administrative Procedure and Texas Register Act (APTRA).

§1.4. *Severability.* If any provision of these regulations or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are declared to be severable.

§1.5. *Terms Defined Herein.* The following words and terms, when used in this chapter, shall have the following meanings.

unless the context clearly indicates otherwise.

**Applicant**—An individual who has submitted an application for registration.

**APTRA**—Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

**Architect**—An individual currently registered to practice architecture in the State of Texas.

**Architect(s)-of-responsibility**—The architect(s) through whom a firm is authorized to offer/perform architectural services and/or whose architect(s)' seal(s) and signature(s) appears on documents issued from that firm.

**Architects' registration law**—Regulation of the practice of architecture, Texas Civil Statutes, Article 249a.

**A.R.E.**—The current architect registration examination, prepared by NCARB.

**Candidate**—An individual who has qualified for examination.

**Contract documents**—Documents issued for bidding, permit, or construction purposes, consisting of drawings, specifications, or addenda.

**IDP**—Intern Development Program.

**IDP applicant**—An individual who is obtaining the IDP diversified experience requirements set forth in the Texas table of diversified experience requirements for IDP, and has submitted an application for registration to the board.

**NAAB**—National Architectural Accrediting Board.

**NCARB**—National Council of Architectural Registration Boards.

**Principal**—An individual who is an architect, and in charge of an organization's architectural practice, either alone or with other architects.

**Registrant**—See architect.

**Table of equivalents**—The table of education and experience qualifications used by the board to qualify candidates for examination.

**TBAE**—Texas Board of Architectural Examiners.

**§1.6. Office.** The board shall maintain an office as its official place of business, which shall be the board's office for its executive director, staff, and records in Austin.

**§1.7. Person for Service of Process.** The name and address of the person designated by the board upon whom service of process may be served in judicial procedures against the board is the executive director and/or the secretary-treasurer at the address of the official place of business of the board.

**§1.8. Meetings and Notices Thereof.** Two regular meetings shall be held each year and as many special meetings as may be necessary for the proper performance of the duties of the board. An annual meeting of the board shall be held during the month of January of each year at a time, place, and date which shall be determined by the board. Special meetings of the board may

be called by the chairman or upon the request of any two members, by giving at least five days written notice to each member of the time and place of such meeting. All meetings of the board shall be held in accordance with the Open Meetings Act (Texas Civil Statutes, Article 6252-17).

**§1.9. Officers and Employees.** As prescribed by law, the board shall elect a chairman, vice-chairman, and secretary-treasurer. These officers shall hold office until their successors shall have been elected and qualified.

(1) The chairman shall, when present, preside at all meetings; appoint all committees; sign all certificates of registration issued; and perform all other duties pertaining to his office.

(2) The vice-chairman shall, in the absence of the chairman, fulfill all responsibilities of the chairman and, if necessary, succeed the chairman without election during the then current year.

(3) The secretary-treasurer shall, with the assistance of such executive and clerical help as may be required, keep a record of all the proceedings of the board and of all monies received or expended by the board, which record shall be open to public inspection at all reasonable times.

(4) The board may employ such executive, stenographic, and office assistance, including an executive director, as is necessary and such professional assistance at examinations as is required, and shall rent office space as necessary to house the staff and records.

(5) The board may designate the executive director who shall have possession, on behalf of the secretary-treasurer, of all the official records of the board and who may, under the supervision of the board and the secretary-treasurer, perform such administrative and ministerial duties as the board authorizes.

(6) The board authorizes the executive director and Staff Services Officer I or Administrative Technician IV to sign expenditure vouchers.

**§1.10. Rules Committee.** A standing rules committee consisting of two architect board members and one landscape architect board member shall be appointed by the chairman at the annual meeting. Duties of the rules committee shall be:

(1) to review and accept or modify proposed changes to board rules as presented by staff;

(2) to initiate proposed changes and review with staff; and

(3) present agreed proposed changes to the board at the fall meeting of the board, or at an interim meeting when the immediate attention of the board is required.

**§1.11. Official Seal.** As its official seal, the board will use a seal similar to that of the State of Texas with the words "Texas Board of Architectural Examiners" replacing the words "The State of Texas," in-

scribed around the perimeter.

**§1.12. Attorneys.** In discharging its responsibilities the Texas Board of Architectural Examiners may utilize the services of the attorney general, the district attorney, the county attorney, or may engage private counsel as prescribed by statutes.

**§1.13. Robert's Rules of Order.** Unless required otherwise by law or these rules, *Robert's Rules of Order* shall be used in the conduct of business by this board.

**§1.14. Quorum.** Five members of the board shall constitute a quorum, but official action may not be taken upon any question unless five members vote in accord, and the chairman may cast a vote.

**§1.15. Signing Certificates.** Each certificate of registration shall be signed by the chairman, vice-chairman, and secretary-treasurer of the board, and shall bear the seal of the Texas Board of Architectural Examiners.

**§1.16. Official Records.** Among other official records required by law, or by rules of other agencies in support of law, there shall be kept in the board offices accurate and current records, including but not limited to:

(1) minutes—a record containing in proper order, proceedings of each meeting of the board;

(2) record of registrants—a record containing the name and registration number of all persons to whom certificates of registration are issued, the last known address of all architects, and a record of all current renewals effected through annual registration;

(3) registrant files—an individual file for each architect, containing the original application, relevant verification and evaluation data, records of examinations and scores, date of original registration, and a record of annual registrations and fees received after original registration, and, when applicable, records of alleged violations, suspensions, and revocations;

(4) finances—a system of record keeping correctly and currently indicating funds budgeted, committed, spent, and remaining, as well as projections of appropriate requests for consideration in budget development;

(5) records of candidates—an individual file for each candidate for licensing, containing the original application, educational transcripts, employer certification, evaluation data, records of examinations and scores, and date of original registration. Upon registration, such files shall be transferred to the registrant's permanent file (See also §1.50 of this title (relating to Reapplication));

(6) records of nonregistrants—records which shall be kept of those unregistered persons or firms, against whom allegations of violations have been filed,

together with the resulting actions taken in accordance with the authority in Subchapter J of this chapter (relating to Violations by Unregistered Persons).

§1.17. *Expenses.* Members of the board and board staff shall be reimbursed expenses incurred in the conduct of board business, as allowed by law.

§1.18. *NCARB.*

(a) The board shall maintain membership in the National Council of Architectural Registration Boards and its regional conference.

(b) Up-to-date information on the examination syllabus and policies adopted from time to time by NCARB shall be developed by the board staff, and reported to the board regularly.

(c) This board will cooperate with NCARB in furnishing transcripts of records, giving examinations upon request, and rendering all other assistance calculated to aid in establishing uniform standards of professional qualification throughout the United States.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Robert H. Norris, AIA  
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For further information, please call  
(512) 458-1363



## Subchapter B. Registration [and Definitions]

### ★ 22 TAC §§1.21-1.23, 1.25, 1.27-1.29

The Texas Board of Architectural Examiners proposes amendments to §§1.21-1.23, 1.25, and 1.27-1.29, concerning the eligibility, application process, and registration of an architect in the State of Texas. The subchapter title is changed because definitions are being placed in another subchapter. The application deadline dates are changed because the 1986 deadline is obsolete.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer understanding of the eligibility requirements for filing an application for examination, the application process, and the conditions under which a violation may affect consideration of an application. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.21. *Eligibility.*

(a)-(b) (No change.)

(c) On and after December 31, 1983, all applicants who have not acquired eight years education and/or experience [candidates] shall be required to include in their experience record the requirements of the Intern Development Program as shown in the schedule of diversified experience [training] requirements for [in] that program.

§1.22. *Exceptions.*

(a) The following [acts] are sufficient individually to preclude an applicant's eligibility as a candidate for registration:

(1)-(3) (No change.)

(b) **The application of a person against whom the board has initiated legal action may be held at the board's discretion, without approval, disapproval, or rejection until:**

(1) **the applicant is in full compliance with all orders and judgments of the court, all rules of the board, and all provisions of the Act; and**

(2) **such applicant has filed evidence satisfactory to the board of such compliance.**

(c) **When such compliance as referred to in subsection (b) of this section has been secured and evidence furnished, the board shall complete the consideration of the application in the regular order of business for other applications to the board.**

§1.23. *Forms and Instructions.*

[(a)] Application forms and instructions will be furnished upon request.

[(b) For the 1986 architect registration examination (ARE)] The forms required must be properly and completely executed, and returned over the signature of the applicant with **all required supporting documentation and fees** [required].

[(c) For the 1987 ARE and subsequent examinations, the forms required must be properly and completely executed, and returned over the signature of the applicant with all required supporting documentation

and fees.]

§1.25. *Processing.*

(a) **All applications and supporting documentation** [for the 1986 ARE] must be postmarked no later than February 1[3], [1986] **or delivered to the board office no later than 5 p.m. on that date, except where that date falls on a Saturday or Sunday, in which case the date shall be the following Monday.** [Applications received after this date will be processed for the 1987 ARE.]

(b) **When received incomplete or without required fees, applications will be returned for completion and resubmittal** [and all supporting documentation for the 1987 ARE and subsequent examinations must be postmarked no later than February 1, except where that date occurs on a Saturday or Sunday, in which case it shall be the following Monday].

(c) When received complete and accompanied by required fees, **applications** [they] will be entered into the board records. Information submitted will be verified and evaluated, and subsequent submittals may be required of the applicant.

§1.27. *Continuance.*

(a) Properly submitted applications for registration by written examination, approved or in the process of approval, will be effective for three years only. Thereafter, the board may require the **applicant** [candidate] to update the application or reapply.

(b) (No change.)

§1.28. *Reciprocal Transfer.*

(a) **Individuals** [Architects] holding certificates of registration in other states, nations, or territories applying for registration in Texas by reciprocal transfer, shall be considered upon transmittal of their council record from the National Council of Architectural Registration Boards in Washington, D.C.

(b) (No change.)

(c) Fees for registration in Texas, as stated in Subchapter E of this chapter (relating to Fees), must be submitted within 60 days after notification of tentative approval. Final approval will follow receipt of the applicant's affidavit **and fee.**

(d) (No change.)

§1.29. *Education and ['] Experience Equivalencies.* In the board's evaluation of education and experience credits required, the **applicant's** [candidate's] application will be subject to equivalency standards established in the table of equivalents for education and experience **and the Texas table of diversified experience requirements for the Intern Development Program (IDP).**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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(512) 458-1363



### Subchapter C, Written Examination [Examinations]

#### ★ 22 TAC §§1.41-1.44, 1.46, 1.48

The Texas Board of Architectural Examiners proposes amendments to §§1.41-1.44, 1.46 and 1.48, concerning the examination for registration as an architect in the State of Texas. The amendments clarify the examination for registration.

Robert H. Norris, AIA, executive director has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better understanding of the architect registration examination administered by this board, and a reemphasizing that the board will not review examinations. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

**§1.41 Required.** Applicants for registration by examination, with required approval as **candidates** [candidate(s)] by this board, must submit to the written examination as outlined in the **subchapter** [chapter].

**§1.42 Schedules.** Written examinations will be administered by this board, in June of each year, to approved candidates only. Examination formats, dates, times, and places will be announced in notices mailed to candidates approximately **April 1 of each year** [eight weeks prior to such arrangements].

**§1.43 Format.** The only examination [Examinations] offered by the Texas board for registration will be the **architect registration examination (A.R.E.)** [NCARB syllabus], a **multiple division written and graphic examination**, developed by the NCARB [that organization's] Examination Committee, as approved by the board for administration on specified dates. The **A.R.E.** [architect registration examination (ARE)] will be the only examination offered for registration. The ARE will be given over four consecutive days; the format may be obtained from the board office. **A candidate** [To pass the examination, an applicant] must achieve a **passing score in** [grade on] each division of the **examination**[:]. Scores from the individual divisions cannot be averaged to **achieve a passing score**.

**§1.44. Reporting.** Approved candidates shall appear personally for examination at the designated date, time, and place. Each **candidate** will be identified by an authorized candidate **identification** card mailed to the **candidate** prior to examination dates.

#### **§1.46. Scoring [Grading]**

(a) **Scoring** [Grading] procedures for all examinations will be given to the candidates prior to the examination.

(b) There will be no **board** review of examinations. Candidates may obtain a copy of his/her graphic portions of Division B and Division C upon written request and payment of \$5.00 for Division B, \$25 for Division C. (Checks should be made payable to the Texas Board of Architectural Examiners.)

**§1.48. Reexamination.** Candidates will have unlimited opportunities to retake individual divisions of the ARE [that] they **have failed** [fail]. [Candidates failing to appear for reexamination within a three-year period will forfeit any credits for parts passed, and will be required to reapply for admission to the examination.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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For further information, please call  
(512) 458-1363



#### ★ 22 TAC §1.49, §1.50

The Texas Board of Architectural Examiners proposes new §1.49 and §1.50, concerning the examination for registration as an architect in Texas. These new

sections allow the acceptance of examination scores passed in other jurisdictions and clarify the reapplication for examination process.

Robert H. Norris, AIA, executive director, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated increase in revenue of \$600 each year in 1988 and 1989, and \$50 each year in 1990-1992. There will be no effect on local government or small businesses.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that acceptance of transferred scores will avoid requiring a candidate to pass divisions of the examination a second time; a three-year period to appear for the examination serves notice that the board will not maintain an applicant's file indefinitely. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be a cost to the applicant of \$120 each year in 1988 and 1989, and \$10 in 1990-1992.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

**§1.49 Transfer of Passing Scores.** At the board's discretion, candidates' passing scores may be exchanged with other NCARB member boards. The acceptance of such scores shall terminate the candidate's application with the board forwarding the scores.

**§1.50 Reapplication.** Candidates who do not appear for examination within a three-year period will be required to reapply for admission to the examination. Any credit for divisions previously passed will be forfeited.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter D. Certification and Annual Registration

### ★ 22 TAC §§1.61, 1.63, 1.64, 1.67, 1.68

The Texas Board of Architectural Examiners proposes amendments to §§1.61, 1.63, 1.64, 1.67, and 1.68, concerning the certificate of registration and annual registration of an architect in the State of Texas. The amendments change language in the sections which brings them into compliance with language in the statute; change the word "certificates" to "certificate," in regard to replacement certificates of registration; and insert a reference to the architect's responsibility to notify the board of any address change in writing.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be elimination of display of a duplicate certificate from an office in which an architect may not be employed on a full-time basis, and assurance that the board has a current address for each architect when regulating their practice. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

**§1.61. Certificates of Registration.** Certificates of registration will be issued to individuals only, and to such individuals only as have met statutory registration requirements through established board rules and regulations. No **certificates** [certificate] of registration will be issued to any firm, partnership, corporation, or other group of persons.

**§1.63. Display of Certificate.** Each person holding a certificate of registration shall display it at his **or her** place of practice, and be prepared to substantiate annual registration renewal for the current year.

**§1.64. Replacement Certificate [Certificates].** A replacement **certificate** [certificates] will be issued to a registrant to replace one lost or destroyed provided:  
(1)-(3) (No change.)

**§1.67. Annual Registration Procedure.** Annual registration renewal notices will be sent all registrants to the last known address of record. Instructions and dates for remitting will appear on such notices. It is the responsibility of the registrant to notify the board **in writing** of any address change.

**§1.68. Failure to Register Annually.**

(a) Failure to register annually and remit renewal fees as prescribed by law will result in board hearing for [suspension or] revocation [, or both] of the **registrant's certificate** [registrants' certificates] of registration.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter E. Fees

### ★ 22 TAC §§1.83, 1.84, 1.87, 1.88

The Texas Board of Architectural Examiners proposes amendments to §§1.83, 1.84, 1.87, and 1.88, concerning fees. These amendments clarify the reexamination fee; architects instead of registrants; and the fee for replacement of a certificate.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be assurance that the registrant is an architect and not registered as a licensee of another occupation regulated by the state, and public notice requiring a fee for reexamination. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

**§1.83. Reexamination Fees.** Candidates failing in first efforts will receive reexamination notices and statements for **reexamination** [examination] fees as prescribed by the board.

**§1.84. Annual Registration and Renewal Fee.**

(a) Notice of annual registration and renewal will be mailed to all **architects** [registrants]. These notices will specify the fee required (not to exceed \$50 for residents nor \$100 for nonresidents).

(b) Registrations will expire on staggered dates. Notices will be mailed to **architects** [registrants] whose license number ends with an even number on or about January 15, with payment due before March 1. For those whose license number ends with an odd number, notices will be mailed on or about June 15, with payment due before August 1.

(c) (No change.)

**§1.87. Replacement Certificate Fee.** A replacement **certificate** [and additional certificates] authorized by this board will require remittance of \$25 with the letter of request [, for each certificate requested].

**§1.88. Emeritus Fee.** **Architects** [Registrants] 65 years of age or older, who have retired from active practice and or other related professional activities, may request emeritus status. The annual renewal fee for approved emeritus **architects** [registrants] will be \$5.00. Failure to pay the renewal fee will result in revocation. Application for reinstatement may be made for which there will be no reinstatement fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

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(512) 458-1363



### ★ 22 TAC §1.89

The Texas Board of Architectural Examiners proposes new §1.89, concerning the temporary increase in fees of \$110 imposed during the Second Called Session of the 70th Legislature, 1987, by House Bill 61. This new section explains the distribution and the reason for fee increase.

Robert H. Norris, AIA, executive director, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be a temporary fee increase for the 1988 and 1989 fiscal years of \$1,039,500 in 1988 and \$1,082,180 in 1989. There will be no effect on local government. The cost of compliance with the section for small businesses will be an increased annual cost of \$110 for each architect employee where the business pays individual renewal fees as a compensation benefit. The cost of compliance for large businesses will be greater than that of small businesses based upon the cost per employee. The agency is unable to determine the exact amount of the difference.

Mr. Norris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be knowledge of the temporary fee, along with effective dates, and an explanation of where fee will be deposited. The anticipated economic cost to individuals who are required to comply with the section as proposed will be the cost of the exam for applicants of \$110 each year in 1988 and 1989, and the cost to registrants of \$110 in 1988 and 1989.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The new section is proposed under House Bill 61, Article 9, 70th Legislature, Second Called Session, 1987, which provides the Texas Board of Architectural Examiners with the authority to charge a temporary fee increase to be deposited to the general revenue and foundation school funds.

#### §1.89. Temporary Increase in Fees.

(a) Fees imposed under §§1.82, 1.84(a), and 1.86 of this title (relating to Application and Examination Fees; Annual Registration and Renewal Fee; and Reciprocal Transfer Fee) that first become due after August 31, 1987, but before August 31, 1989, are increased by \$110.

(b) Of each fee increase collected, \$27.50 shall be deposited to the credit of the foundation school fund and \$82.50 shall be deposited to the credit of the general revenue fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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### Subchapter G. Titles, Firm Names, and Assumed Names

#### ★22 TAC §§1.122-1.125

The Texas Board of Architectural Examiners proposes amendments to §§1.122-1.125, concerning architectural firm names in this state. These amendments clarify architectural firms' authority for practice and relocate wording relating to nonengineering firms

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clear procedure for identification of the architect of responsibility when an offer to provide or perform architectural services is made. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

#### §1.122. Authority for Practice.

(a) Without lawful authority to practice architecture in Texas, organizations of people however constituted are not authorized to solicit or execute architectural services; such groups of persons organized in practice are dependent on the authority of individual **architects** [registrants] responsible to this board. **Unregistered persons who offer to provide architectural services in Texas may do so only if the architect who will be performing such services is identified by name and registration number at the time such services are offered.**

(b) **Each architectural firm in the State of Texas where architectural service is offered or performed shall have a Texas registered architect employed and practicing on a full-time basis in each separate office location. An office located in Texas not having**

**a person licensed as an architect in Texas employed on a full-time basis in the office shall not offer to perform architectural services for the public unless all negotiations with prospective clients, whether written or oral, clearly designate the architect(s) registered in Texas who will be the architect(s)-of-responsibility.**

(c)[(b)] corporate practice in architecture is permissible under the statutes, when lawfully constituted, but only then upon the authority of individual **architects** [registrants] responsible to this board for the acts and conduct of the corporate practice.

(d)[(c)] Thus, that responsibility of this board to **protect the public interests from** [safeguard the life, health, and property, and the public welfare against] the irresponsible practice of [the profession of] architecture is vested in the qualification and responsibility of **architects** [registrants] who are accountable individually.

*§1.123 Firm Names. Architects* [Registrants] holding current certificates of registration may organize or engage in any form of individual or group practice of architecture allowed by statutes in [of] this state, **and may entitle such** [if the firm name identity of that] practice **accordingly.**[:]

(1) [Includes] The **surname or any combination** [name] of surnames of a **person or persons registered to practice architecture** [at least one architect, and does not imply architectural registration of others included who are not licensed as architects] in **this state** [Texas] **may be used to entitle a firm practicing architecture. Given names and/or initials are not required to accompany a surname in such firm entitlement.**

(2) **Firm names which include other than those in paragraph (1) of this section (ie, surnames of nonarchitects, initials only, acronyms, etc.) are permissible provided that the architect(s)** [Does not publicly imply registration authority to practice architecture without properly identifying and registrant] responsible to this board is **properly identified in accordance with** [, for that practice, as required by] §1.124 of this title (relating to Assumed Names).

#### §1.124 Assumed Names.

(a) Any person engaging in the practice of architecture in this state, under any **firm** [business] title other than the real name or real names of **an** [a registered] architect or [registered] architects, whether individually, or as an association, partnership, or corporation, shall file in the office of this board a certificate, on a form promulgated by the board, stating the full name and residence address of each **architect-of-responsibility** [registered architect] engaging in that practice, the place (including street, number, city, and zip code) where that practice is principally conducted, and the title under which the practice is conducted. (See also §1.122(b) [§1.105(b)] of this title (relating to **Authority for Practice** [Prohibited Use]). Said certificate shall be signed **before a**

notary public by the architect(s)-of-responsibility [registered architect or architects] through which the individuals, association, partnership, or corporation is authorized to practice and the principal, senior partner, administrative head, or corporate president, as the case may be, of the firm [organization] for which the certificate is filed.

(b) Upon the retirement, withdrawal, disassociation, or new association of any architect-of-responsibility [registered architect] from the firm [organization, a new certificate, as described in subsection (a) of this section, must be filed at the board office within 30 days of the effective date of the change to reflect the change in the responsible architect's association with the organization. New certificates must also be executed] or upon [a] change of address of [any person listed on the original certificate and upon change of address of] the operation's location, a letter on the firm's letter-head [All certificates described in subsection (a) of this section] must be filed at the board office within 30 days of the effective date of the change to reflect such change [signed by the architect(s) and the principal, senior partner, administrative head, or corporate president, as the case may be].

(c) In the case of the death of the architect-of-responsibility [registered architect] who has previously filed a certificate, the certificate reflecting the changed circumstances may be executed by the executor or administrator of his estate.

(d) (No change.)

#### §1.125. Engineering Firms.

(a) Firms engaging in both engineering and architecture shall first file notice with this office stating that:

(1) (No change.)

(2) that architects named in such notice (and named in §1.124 of this title (relating to Assumed Names)) have authority from the governing body of such business entity as would result in it being legally liable for all professional acts and conduct of the architects named.

[(b)] This statement of accepted liability must be over the acknowledgement of a notary public [, and if such notice is filed by a corporation it must be accompanied by a properly executed corporate resolution].

[(c)] Authority for practice will be effective only after notices required previously are acknowledged and approved by the Texas Board of Architectural Examiners.

[(d)] It will be the responsibility of architects named in these authorizations to advise the board of organizational changes that would relate to the authority granted under this section. Failure to do so could result in disciplinary action leading to suspension or revocation of the registrant's license.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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(512) 458-1363



#### ★ 22 TAC §1.126, §1.127

The Texas Board of Architectural Examiners proposes new §1.126 and §1.127, concerning firms engaging in the practice of architecture in this state. These new sections clarify the requirements for assumed names certificates and corporate resolutions.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an improvement in the procedure by which the architect of responsibility in an architectural firm may be identified. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.126. *Others.* Firms engaging in architecture when lawfully constituted as joint ventures, design-builders, corporations, and other groups, regardless of the form of lawful constitution, shall first file a properly executed assumed name certificate.

(1) The actual practice of architecture on behalf of such firms, partnerships, or corporations is to be carried on only by architects registered in this state who will be responsible to this board for acts and conduct of such firms.

(2) That architects named in §1.124 of this title (relating to Assumed Names) have authority from the governing body of such business entity as would result in it being legally liable for all professional acts and

conduct of the architects named. This statement of accepted liability must be over the acknowledgement of a notary public.

§1.127. *Corporate Resolutions.* A corporation filing an assumed name certificate as required in §§1.124, 1.125, and 1.126 of this title (relating to Assumed Names, Engineering Firms, and Others), shall accompany the certificate with a properly executed corporate resolution. Forms are available at the board office.

(1) The resolution shall contain the name and location of the corporation and the names and registration numbers of the architects responsible to this board.

(2) The resolution shall be styled in such a manner as to allow the directors of the corporation to designate the authority for all architectural acts by the corporation to the named architects.

(3) The statements and signatures included in the resolution shall be over the acknowledgement of a notary public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Robert H. Norris, AIA  
Executive Director  
Texas Board of  
Architectural  
Examiners

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For further information, please call  
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#### Subchapter H. Rules of Conduct

#### ★ 22 TAC §§1.141-1.144, 1.146

The Texas Board of Architectural Examiners proposes amendments to §§1.141-1.144 and 1.146, concerning the rules of conduct for architects in this state. These amendments clarify the standards of practice required of architects and states the reasons for which the board may consider suspension or revocation of certificates of registration.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a better understanding as a result of clarifying language concerning the rules of conduct for architects. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§1.141. *Authority.*

(a) (No change.)

(b) [Provisions of the Act further charge] The board is **charged** with adoption of all reasonable and necessary rules and regulations which it may deem advisable [,] and is **empowered** [empowers the board] with authority to **suspend or revoke** [and cancel] certificates of registration for certain causes.

(c) To [qualify statutory provisions of the Act, and] establish certain standards of procedure and conduct for **architects** [registrants] in practice, this and other chapters of **these sections** [this codification] should be studied carefully.

§1.142. *[Mandatory] Standards of Practice.*

This board will require of each **architect** [registrant] conduct witnessing to high standards of integrity, judgement, business ability, and professional skill in practice. [Engaged in a profession having critical responsibilities to the public, each registrant shall reflect in practice a real and determined concern for the safety and welfare of that public. In relationships with clients, each shall demonstrate goals of honest purpose and service. As the arbiter of agreements involving clients and builders, the registrants' decisions must be prompt, specific, impartial, and just. Each registrant must be faithful to trusts and confidences, and responsible in obligations to employers, employees, and associates. And, registrants will be expected to respect and promote standards of practice developed as ethics, common to responsible, professional behavior, and service of architects.]

§1.143. *[Prohibited:] Grounds for Suspension or Revocation.* After due notice and hearing, upon its own motion, this board may deny, [temporarily] suspend, or [permanently] revoke a certificate of registration upon proof satisfactory to the board that the holder of such certificate is guilty of:

(1)-(2) (No change.)

(3) recklessness [in conjunction on the part of the architect designing, planning, or supervising the construction or alteration of same]; or

(4) (No change.)

§1.144. *Gross Incompetence Defined.*

[(a) Registrants responsible to this board have been examined under provisions of law and rules lawfully adopted, and found capable in qualifications required for the practice of architecture. Such requirements,

however, only establish minimum standards of competence. Registrants are expected to continue their professional development after registration, improving and increasing their proficiency and skills as possible.

[(b) Having no authority to prequalify the registrant's activity in practice, as the registrant offers and executes planning services, this board will expect each registrant to undertake only those professional assignments he is qualified to perform, and lawfully authorized to undertake.

[(c) It will be the position of this board, therefore, that each registrant has claimed competence and authority equal to the challenge of any professional assignment undertaken, and is responsible for performing required services in a skillful, thorough, and timely manner, capable of successful results.

[(d) The following practices, among others, may be deemed gross incompetence, and cause for denial, suspension, or revocation of certificates of registration in Texas:

(1) failure to use due diligence and proper restraint in planning or [and] observation procedures [, thus endangering the safety and welfare of the public];

(2) failure to engage **necessary** [other] design professionals [,] competent and authorized to practice in **their** [related planning] disciplines; or [, when the registrant is otherwise responsible for obvious technical or tactical error jeopardizing the success or safety of the project, the public, the client, and/or builder];

(3) failure to clearly, accurately, and completely develop **contract documents** [plans, drawings, specifications, and other instruments of service in practice] that properly qualify the requirements intended[,] and insure against misunderstandings jeopardizing the client and/or [the] builder;

[(4) failure to use due diligence and available counsel in preparing documents for the protection of a client, in construction agreements involving the registrant's responsibility;

[(5) when it is proven, to the satisfaction of this board, that a registrant is mentally incompetent or habitually addicted to alcohol or drugs.]

§1.146. *Dishonest Practice Defined.*

(a) The following practices, among others, may be deemed dishonest practice and cause for denial, suspension, or revocation of certificates of registration in Texas:

[(1) conviction of a felony involving moral turpitude;]

(1) [(2)] acts which evidence violation, or attempts to violate, any laws or rules of this or any other state relating to registration to practice architecture. The misrepresentation or omission of relevant fact required or requested by application forms, notices, etc., issued by registration authorities are considered violations;

(2) [(3)] acts which evidence attempts by an architect, through commission or omission, to mislead or defraud any per-

son or persons;

(3) [(4)] acts which evidence attempts or success in efforts violating rules regarding the use of an architect's seal; see Subchapter F of this chapter (relating to Architect's Seal);

(4) [(5)] acts which evidence attempts or success in efforts to bribe any person or persons who may influence the selection of any architect [. Kickbacks, donations, or forgiveness offered or paid to gain improper advantage in selection will be considered bribes];

(5) [(6)] acts which evidence attempts to conceal personal interests in conflict with responsibilities of service to a client;

(6) [(7)] acts which evidence improper partiality as arbiter or interpreter in matters relating to client/contractor agreements resulting in or from unauthorized waivers, deviations, or disregard of provisions in such agreements; or

(7) [(8)] acts [evidenced by improper and unauthorized involvement in projects by one architect, when another is the architect-of-record] **which evidence inaccurate, false, or misleading advertising or representation to a prospective or existing client or employer of his or her qualifications or of the scope of his or her responsibility in connection with work for which he or she is claiming credit.**

[(9) acts evidenced by inappropriate solicitations or offerings, paid advertisements, or publications, wherein an architect or architectural organization employs false, deceptive, misleading, or self-laudatory processes in developing new commission opportunities.]

(b) **An architect possessing knowledge of a violation of these sections by another architect shall report such knowledge to TBAE. Failure to report such knowledge may be cause for disciplinary action.**

(c) [(b)] Permissible. The following practices, among others, are permissible:

(1) publication and distribution of professional cards and brochures giving factual [dignified] information [free of ostentatious, complimentary, or self-laudatory implications (see also paragraph (5) of this subsection)];

(2) subscription to telephone listing services, including classified sections of telephone directories **giving factual information** [as in paragraph (1) of this subsection];

(3) subscription to professional directories within business and professional publications **giving factual information** [as in paragraph (1) of this subsection];

(4) authoring and permitting publication of professional and/or technical papers, descriptive graphics, etc. within the technical press, but only to the extent that factual information is presented [, or as in paragraph (1) of this subsection]; **and**

(5) advertisement in public media; services available, fees, etc. **giving factual information** [, as in paragraph (1) of this subsection,] except as in subsection (a) (7) [(9)] of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

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(512) 458-1363



**★ 22 TAC §1.145**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.145, concerning recklessness in the practice of architecture. This repeal allows the board to promulgate a new section clarifying language.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Norris also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be better communication and understanding as a result of establishing a new section. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The repeal is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

**§1.145. Recklessness in Building Defined.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Robert H. Norris, AIA  
Executive Director  
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(512) 458-1363



**★ 22 TAC §§1.145, 1.147, 1.148**

The Texas Board of Architectural Examiners proposes new §§1.145, 1.147, and 1.148, concerning the basis for suspension or revocation of certificates of registration. These new sections clarify recklessness in architectural practice, and add provision for an architect's completion of the alcohol or drug rehabilitation program in Texas

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be language more clearly defining recklessness as it is enforced by the board. The anticipated economic cost to individuals who are required to comply with the section as proposed will be the rehabilitation program cost, which will vary with the nature and severity of the addiction.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The new sections are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules

**§1.145. Recklessness Defined** The following practices, among others, may be deemed recklessness, and cause for denial, suspension, or revocation of certificates of registration in Texas:

- (1) failure to fully advise clients of the implications of results of decisions made by the architect when those results are not reasonably predictable;
- (2) failure to exercise particular care and attention toward the intended results when procedures, techniques, materials, systems, etc., unfamiliar to the architect, are employed as a result of his/her decision; or
- (3) acts which evidence disregard or neglect in complying with regulations, codes,

ordinances, and recognized standards regulating construction at the place of building.

**§1.147. Addiction/Habituation.** If, in the course of a disciplinary proceeding, it is found by the board that addiction or habituation to alcohol or a controlled substance, as provided by Texas Civil Statutes, Article 4476-15 (Controlled Substance Act), §1.02 (4), contributed to a violation of the Architect's Registration Law or rules of this board, then the board may condition its disposition of the disciplinary matter on the architect's completion of a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse at a facility also approved by the commission.

**§1.148. Record of Conviction.** The board may deny an applicant's eligibility and suspend or revoke an architect's certificate of registration for conviction of a misdemeanor or felony and consistent with Texas Civil Statutes, Article 6252-13c. The procedures for such action by the board will be governed by Texas Civil Statutes, Article 6252-13d.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 2, 1987.

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**Subchapter I. Charges Against Architects: Action**

**★ 22 TAC §§1.161-1.163, 1.165-1.168, 1.172, 1.173, 1.175**

The Texas Board of Architectural Examiners proposes amendments to §§1.161-1.163, 1.165-1.168, 1.172, 1.173, and 1.175, concerning complaints and actions against architects. These amendments clarify language and change the time of notice of a hearing from 30 days to 15 days.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more expeditious procedure for achieving due process of law. There is no anticipated economic cost to

individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

*§1.161. Suspension and Revocation*

(a) **The board may suspend or revoke a certificate of registration for failure to register annually and remit renewal fees as described** [, shall be handled as outlined] in Subchapter D of this chapter (relating to Certification and Annual Registration) and Subchapter E of this chapter (relating to Fees).

(b) **The board may suspend or revoke a certificate of registration for proof of acts as described in Subchapter H of this chapter (relating to Rules of Conduct).**

*§1.162. Definition of Complaint.* In order for the board to act on complaints against architects filed with the board by persons other than the board's enforcement staff, the complaint shall be submitted in writing, on a form provided by the board, and acknowledged before a notary public. **No oral communication of complaints shall be investigated by the board.** All written (unsworn) complaints shall be kept in an information file as required by Texas Civil Statutes, Article 249a, §5(e), the regulation of the practice and architecture [Act].

*§1.163. Records.*

(a) (No change.)

(b) On each written complaint relating to **an architect** [a licensee] filed with the board, a report to the complainant shall be made at least as frequently as quarterly on the status of the complaint until the **final disposition** [complaint is finally disposed] of the **complaint**.

*§1.165. Informal Disposition.* Informal hearings of disciplinary actions may be conducted after the filing of a sworn complaint but before a formal board hearing is set. Informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default. Informal hearings may be chaired by one board member, or the designate or representative of the board. The **board** [agency] shall present its evidence substantiating the complaint, and the **architect** [respondent] may present [his] evidence by correspondence or appearance at the informal hearings, in an effort to bring about an adjustment and equitable solution to the matter without a formal hearing before the [full] board. All informal dispositions of matters shall not be final and effective until the [full] board, at a regularly called session, endorses and renders its acceptance of the

proposed agreement of the parties. **If the controversy is not resolved**, such informal hearing shall be held without prejudice to the right of the board thereafter, [if the controversy is not resolved,] to institute a formal hearing governing the same matters, or the right of the **architect** [registrant] involved, [if the controversy is not resolved,] to request a formal hearing.

*§1.166. Notice of Hearings.* Prior to an informal or formal hearing by the board, the **architect** [respondent] shall be advised of the specifics in the complaint as well as the date, time, and place of such informal or formal hearings; provided, however, that notice of said hearing shall be served upon the **architect** [respondent] no less than 15 days prior to the date set for said hearing.

*§1.167. Appeals from Board Orders.* **An architect** [A registrant] who is aggrieved by a decision of the board, may file **an appeal** [suit] within 30 days of receipt of a copy of the board's order in the district court of Travis County [Trial shall be] **and** as set out in the **Architects' Registration Law** [Article 249a].

*§1.168. Witnesses.* The board shall hear such witnesses as are reasonably necessary to fairly present the relevant issues as set forth in the complaint, together with witnesses knowledgeable of material facts to the defense of the **architect** [respondent].

*§1.172. Findings.*

(a) At the conclusion of each hearing and after careful consideration of all the evidence, the board shall make a finding in each case. The board may find that:

(1) (No change.)

(2) the complaint is substantiated and the **architect** [respondent] has violated the **Architects' Registration Law**, or board rules and regulations involved. **In such case** [If the finding is guilty], the board shall then determine the penalty to be imposed. The penalty [resulting from finding of guilty] shall be one of the following.

[(A) Reprimand. The formal notice of this board that the respondent has been found guilty of violations which can and must be corrected as instructed and failure to correct may result in suspension and/or revocation, or both.

[(B) Censure. The formal notice of this board that the respondent has been found guilty of violations which cannot be corrected, and which if repeated may result in suspension and/or revocation, or both.]

[(A)][(C)] Suspension. The formal notice of the board that the finding [of guilty] has resulted in suspension of the **architect's certificate** [respondent's certification] of registration for a stated period of time as determined by the board; all or part of which suspension may be probated under such terms as may be determined by the board.

[(B)][(D)] Revocation. The formal notice of this board that the finding [of guilty] has resulted in revocation of the **archi-**

**tect's** [respondent's] certificate of registration.

(b) (No change.)

*§1.173. Correspondence.* The executive director may carry on correspondence with the **architect** [respondent] or the complainant, provided copies of such correspondence with either shall be immediately furnished the other.

*§1.175. Absence from a Hearing.* Appearance at a hearing may be waived by the **architect** [respondent]. If so waived, the hearing shall proceed at the time and place set in the notice of the hearing and said waiver shall be noted in the record. If the **architect** [respondent] fails to appear at the hearing, the board may proceed to hear evidence in support of the complaint and render a judgment thereon.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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★ 22 TAC §1.176

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.176, concerning time extensions for hearings. This repeal allows the board to proposed a new section defining the terms and procedures for time extensions for board hearings.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr Norris also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a clearer understanding of the conditions under which a request for time extensions will be considered. There is no anticipated economic cost to individuals who are re-

quired to comply with the proposed repeal

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The repeal is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules

*§1.176. Time Extensions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Executive Director  
Texas Board of  
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(512) 458-1363



The Texas Board of Architectural Examiners proposes new §1.176, concerning the time extensions for hearings. This new section establishes the procedures for time extensions for hearings.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Norris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clearer understanding of the procedure for requesting a time extension of a hearing date, and the conditions under which such a request will be considered by the board. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The new section is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

*§1.176. Time Extensions.* Motions for postponement, continuance, withdrawal, or dismissal of matters which have been duly

set for hearing, shall be in writing, shall be filed with the executive director, and distributed to all interested parties, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Once a matter has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the presiding officer without consent of all parties involved, unless the board shall have ordered such postponement or continuance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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For further information, please call  
(512) 458-1363



Subchapter J. Violations by  
Unregistered Persons

★ 22 TAC §§1.191-1.194

The Texas Board of Architectural Examiners proposes amendments to §§1.191-1.194, concerning alleged violations of law and rules by unregistered persons. These amendments clarify the language and refer to punitive actions that may be imposed upon unregistered persons.

Robert H. Norris, AIA, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Mr. Norris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a building design industry that is better informed of the punitive risks an unregistered person takes when practicing architecture unlawfully in Texas. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Number 107, Austin, Texas 78758, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

*§1.191. Authority.*

(a) The Texas Architects' Registration Law is specific in its provision, authorizing the lawful practice of architecture. It is equally specific in charging the Texas Board of Architectural Examiners with responsibility for enforcement of the Act. The statutes exempt certain persons from provisions of the Act, but otherwise, unregistered persons are liable for violations.

(b) **Persons or firms offering or performing services under an exception as permitted under the Act, §14, should be aware that this board has authority to assess fines up to \$200 for each day of each offense as defined in the Act, §13.**

*§1.192. Complaints; Alleged Violations.*

(a) Complaints alleging violation of law or lawful rules and regulations, the enforcement of which is a responsibility of the board, shall be addressed to the board office, substantiated by evidence, and signed by the complainant before a notary public.

(b) No oral communications of complaints shall be investigated by the board. All **written** [unsworn] complaints shall be kept in a file in the board office [as required by Texas Civil Statutes, Article 294a, §5(c), regulation of the practice of architecture].

*§1.193. Investigation.* Sworn written complaints alleging violations shall be confirmed and preliminarily investigated by the board's enforcement staff and executive director. After preliminary investigation, the executive director, with the assistance of the board's enforcement staff and counsel, shall:  
(1)-(3) (No change.)

*§1.194. Action.*

(a) **The board, when referring** cases [referred] to counsel [by the board] for court action, **shall** [will] direct counsel to initiate and maintain such actions against the named respondent as are possible, in support of the Architects Registration Law **and applicable** and lawful rules and regulations.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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(512) 458-1363.



Part XV. Texas State Board  
of Pharmacy  
Chapter 291. Pharmacies

★ 22 IAC §291.6

The Texas State Board of Pharmacy proposes an amendment to §291.6, concerning pharmacy license fees. The amendment allows for staggering pharmacy license renewals on a monthly basis and adjusts the fee from \$100 to \$108 a year. The staggering process allows for an even flow of cash into the board's fund, thus allowing for better fiscal planning and control.

Fred S. Brinkley, Jr., R.Ph., executive director/secretary, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated increase in revenue of \$40,000 each year in 1988-1992, based on renewal of 5,000 pharmacy licenses a year. There will be no effect on local government. The cost of compliance with the section for small businesses will be an increase of \$8.00 for the annual renewal of a pharmacy license. The cost of compliance for small businesses will be the same as the cost of compliance for the largest businesses affected by the section.

Mr. Brinkley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be further ensurance of the safety, health, and welfare of the public by regulating the practice of pharmacy. The possible economic cost to individuals who are required to comply with the section as proposed will be new and annual renewal of pharmacy license fee of \$108 each year in 1988-1992.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., 8505 Cross Park Drive, Number 110, Austin, Texas 78754

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §31, which provide the Texas State Board of Pharmacy with the authority to determine a license renewal fee and adopt a system in which licenses to operate a pharmacy expire on various dates during the year.

§291.6. *Pharmacy License Fees.*

(a) The board shall require annual renewal of all licenses provided under the Pharmacy Act, §31. [Pharmacy licenses shall expire on May 31 of each year.] The board shall charge the following fees for the issuance or renewal of a pharmacy license.

(1) The fee for an initial or annual renewal of a pharmacy license shall be \$100 [effective for the 1983-1984 renewal cycle] for licenses issued or renewed on or before March 31, 1988, and \$108 for licenses issued or renewed on or after April 1, 1988.

(2) The pharmacy renewal fee for the 1988-1989 renewal cycle shall be prorated to establish staggered expiration dates for licensure.

(3) New pharmacy licenses issued after April 1, 1988, shall be assigned an expiration date, which date shall be the last day of the month, one year from the date of licensure.

(b)[(2)] The fee for issuance of an amended pharmacy license for change of name or change of location of a pharmacy shall be \$20.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 30, 1987.

TRD-8710790 Fred S. Brinkley, Jr.  
Executive Director  
Texas State Board of  
Pharmacy

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January 8, 1988  
For further information, please call  
(512) 832-0661



★ 22 TAC §291.14

The Texas State Board of Pharmacy proposes an amendment to §291.14, concerning pharmacy license renewal. The amendment establishes the parameters for the receipt of a pharmacy license renewal under the staggered license renewal system

Fred S. Brinkley, Jr., R.Ph., executive director/secretary, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Brinkley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be further ensurance of the safety, health, and welfare of the public by regulating the practice of pharmacy. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., 8505 Cross Park Drive, Number 110, Austin, Texas 78754.

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §31, which provide the Texas State Board of Pharmacy with the authority to adopt a system in which licenses to operate a pharmacy expire on various dates during the year.

§291.14. *Pharmacy License Renewal.*  
For the purposes of Texas Civil Statutes, Article 4542a-1, §31:

(1) a license to operate a pharmacy

expires on the last day of the assigned expiration month [May 31] of each year;

(2) timely receipt of the completed application and renewal fee means the receipt in the board's office of such application and renewal fee:

(A) on or before the last day of the assigned expiration month [May 31] of each year; or

(B) no later than seven days from the date of postmark of the last day of the assigned expiration month [May 31] of each year.

(3)-(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 30, 1987

TRD-8710792 Fred S. Brinkley, Jr.  
Executive Director  
Texas State Board of  
Pharmacy

Earliest possible date of adoption  
January 8, 1988  
For further information, please call  
(512) 832-0661



Institution (Class C) Pharmacy

★ 22 TAC §291.72

The Texas State Board of Pharmacy proposes an amendment to §291.72, concerning definitions. This amendment adds the definition of inpatient. The new definition allows hospitals (of any size) to treat nursing home patients who are hospitalized as inpatients of the hospital.

Fred S. Brinkley, Jr., R.Ph., executive director/secretary, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Brinkley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater efficient and effective use of the institution's resources. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., 8505 Cross Park Drive Suite 110, Austin, Texas 78754.

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §29, which provide the Texas State Board of Pharmacy with the authority to establish by rule the standards that each pharmacy and its employee or personnel involved in the practice of pharmacy shall meet to qualify for the licensing or relicensing as a pharmacy in each classification.



§291.72. *Definitions*—The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

**In-patient**—A person who is duly admitted to the hospital or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility which is under the authority of the hospital's governing body.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 30, 1987

TRD-8710793 Fred S. Brinkley, Jr.  
Executive Director  
Texas State Board of  
Pharmacy

Earliest possible date of adoption:

January 8, 1988

For further information, please call  
(512) 832-0661



## Chapter 295. Pharmacists

### ★22 TAC §295.5

The Texas State Board of Pharmacy proposes an amendment to §295.5, concerning pharmacist license fees. This amendment reduces pharmacist license fees from \$84 to \$60, effective September 1, 1988. This reduction is a result of the reassessment of the fee structure by the board. The board determined that the reduction was possible in light of budgetary and fund balance limitations imposed by the 70th Legislature, 1987.

Fred S. Brinkley, Jr., R.Ph., executive director/secretary, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated loss in revenue of \$360,000 each year in 1989-1993, based on approximately 15,000 annual pharmacist renewals. There will be no effect on local government or small business for the first five-year period the section will be in effect.

Mr. Brinkley also has determined that for each year of the first five years the section will be in effect the public benefit anticipated as a result of enforcing the section will be insurance that pharmacists are practicing pharmacy within the laws and rules governing the practice of pharmacy in the interest of the public health and welfare. The possible economic cost to individuals who are required to comply with the section as proposed will be the annual pharmacist or new licensure fee of \$60 each in 1989-1993.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., Ex-

ecutive Director/Secretary, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754-4533

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §39, which provide the Texas State Board of Pharmacy with the authority to establish a fee not to exceed \$85 a year for processing application and issuance or renewal of a pharmacist license.

§295.5 *Pharmacist License or Renewal Fees*

(a) The fee for issuance of a pharmacist license and for each renewal shall be [\$48 for licenses issued or renewed before February 28, 1987, and] \$84 for licenses issued or renewed after March 1, 1987, and **\$60 for licenses issued or renewed after September 1, 1988.**

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 30, 1987

TRD 8710789 Fred S. Brinkley, Jr.  
Executive Director  
Texas State Board of  
Pharmacy

Earliest possible date of adoption:

January 8, 1988

For further information, please call  
(512) 832-0661



## TITLE 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation Chapter 403. Other Agencies and the Public

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §403.76, concerning exhibits. The repeal is proposed contemporaneously with the proposal of new §403.76, concerning administrative hearing to contest charges for support, maintenance, and treatment before filing notice of lien, and new §403.77, concerning exhibits.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that fiscal implications to state and local government will be related to the volume

of liens filed, but is expected to be minimal. There are no fiscal implications for small businesses.

Ms. Dillard also has determined that for each year of the first five years the repeal is in effect the public benefit will be the use of procedures that ensure clients and responsible parties the opportunity to contest charges before the filing of liens against non-exempt property. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

### Subchapter C. Determination of Rates for Support Maintenance, and Treatment of Clients

#### ★25 TAC §403.76

The repeal is proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.76. *Exhibits.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 2, 1987

TRD-8710798 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption:

January 8, 1988

For further information, please call  
(512) 465-4670.



#### ★25 TAC §403.76, §403.77

The Texas Department of Mental Health and Mental Retardation proposes new §403.76 and §403.77, concerning administrative hearing to contest charges for support, maintenance, and treatment before filing notice of lien, and exhibits.

The new sections implement Senate Bill 257, 70th Legislature, 1987, which amends Texas Civil Statutes, Article 5547-202, by adding new §2.30. This section provides that the department and community mental health and mental retardation centers may file liens to secure reimbursement for the cost of providing support, maintenance, and treatment to mentally ill and mentally retarded clients, and that clients or responsible parties must be provided a means to contest the filing of liens.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that fiscal implications to state and local government will be related to the volume of liens filed, but is expected to be minimal. There are no fiscal implications for small businesses.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit will be the use of procedures that ensure clients and responsible parties the opportunity to contest charges before the filing of liens against non-exempt property. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

The new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§403.76. Administrative Hearing to Contest Charges for Support, Maintenance, and Treatment Before Filing Notice of Lien.**

(a) Whenever a representative of the department proposes to file a notice of lien as provided for in Texas Civil Statutes, Article 5547-202, §2.30 (referred to in §403.77 of this title (relating to Exhibits), as Exhibit E), the representative shall, 30 days prior to filing the written notice of the lien (referred to in §403.77 of this title (relating to Exhibits), as Exhibit F) with the county clerk, notify by certified mail the mentally ill or mentally retarded client and the person legally responsible for the support, maintenance, and treatment of the client, of the intention to file a lien. The notice shall contain:

(1) a copy of the charges, along with the statutory procedures regarding the filing of liens;

(2) a copy of this section, outlining the procedures for contesting the charges;

(3) a property and financial statement (Form B-6, referred to in §403.77 of this title (relating to Exhibits), as Exhibit C); and

(4) a request to appear/waiver of right to appear—administrative hearing to contest charges before filing notice of lien form (referred to in §403.77 of this title (relating to Exhibits), as Exhibit G).

(b) The client or person legally responsible for the support, maintenance, and treatment of the client may petition for a review or contest of such charges prior to the filing of the lien. The contest of such charges will be made to the director, Office of Legal Services, or his designee, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, as follows.

(1) The person wishing to contest the charges shall, within 20 days of receiving

the notice, complete, sign, and forward the forms with cover letter to the director, Office of Legal Services, or his designee, indicating whether it is desired to appear in person or through a representative to present the case. Failure to comply with the provision will result in denying a hearing and the filing of the notice of lien provided by law.

(2) The director, Office of Legal Services, or his designee, will set a definite time for the hearing if the person requesting the hearing elects to appear personally or by a representative. The date for the hearing will be set no less than 10 days nor more than 30 days following receipt of the completed forms.

(3) All hearings under this section will be held at the Texas Department of Mental Health and Mental Retardation, Central Office, 909 West 45th Street, Austin, Texas.

(4) If the person requesting the hearing waives the right to appear in person or by representative, the director, Office of Legal Services, or his designee shall review the charges by considering all of the facts submitted by the person contesting the charges on the forms completed to perfect the hearing as well as all other facts which are available.

(5) The director, Office of Legal Services, or his designee, will make a finding of facts which will be reduced to writing and will sustain, reduce, or increase the charges, and will notify the person contesting the charges of this determination and the facts upon which the determination was made. This action by the director, Office of Legal Services, or his designee shall be final, shall exhaust the procedures for contesting charges, and shall be communicated to the person contesting the charges.

(6) Based upon the findings of the director, Office of Legal Services, or his designee, as appropriate, the department's representative may proceed to file the notice of lien.

**§403.77. Exhibits.** The following exhibits referred to in this subchapter are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668:

(1) Exhibit A—Texas Civil Statutes, Article 5547-300, §61;

(2) Exhibit B—Texas Civil Statutes, Article 3196a, as amended;

(3) Exhibit C—Property and Financial Statement—Form B-6;

(4) Exhibit D—request to appear/waiver of right to appear—administrative appeal from rate determination based upon ability to pay, as revised;

(5) Exhibit E—Texas Civil Statutes, Article 5547-202, §2.30;

(6) Exhibit F—notice of lien;

(7) Exhibit G—request to appear/waiver of right to appear—administrative hearing to contest charges before filing

notice of lien.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 2, 1987.

TRD-8710819 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption  
January 8, 1988

For further information, please call  
(512) 465-4670

## Subchapter R. Patient Abuse in Private Psychiatric Hospitals

### ★ 25 TAC §§403.501-403.507

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §§403.501-403.507, concerning patient abuse in private psychiatric hospitals. The repeals are proposed contemporaneously with the proposal of new sections governing the same matters in Chapter 404, Subchapter C of this title, concerning patient abuse in private psychiatric hospitals.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Dillard also has determined that for the first five years the repeals will be in effect the public benefit anticipated as a result of enforcing the repeals will be the replacement of outdated rules. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

The repeal is proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§403.501. Purpose.**

**§403.502. Application.**

§403.503 Definitions

§403.504 Patient Abuse and Neglect Defined

§403.505 Responsibilities of Administrators.

§403.506. Training in Prevention of Patient Abuse and or Neglect.

§403.507. Notification of Patients of Abuse Reporting Procedures

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on November 25, 1987

TRD-8710653 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption  
January 4, 1988

For further information, please call  
(512) 465 4670



Chapter 404. Protection of Clients and Staff  
Subchapter A. Client Abuse and Neglect in TDMHMR Facilities

★ 25 TAC §§404.1-404.14

(Editor's note: The Texas Department of Mental Health and Mental Retardation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§404.1-404.14, concerning client abuse and neglect in TDMHMR facilities.

The new subchapter is proposed contemporaneously with the proposed repeal of Chapter 405, Subchapter O of this title, concerning client abuse and neglect in TDMHMR facilities. The proposed new sections are also adopted on an emergency basis in this issue of the *Texas Register*.

Many changes in procedure are proposed pursuant to the settlement of *RAJ v. Miller and Lelsz v. Kavanagh*. The use of "Procedures and Techniques for Investigation of Abuse and Neglect," which further delineates classes of abuse and investigatory methods, is required. All allegations of abuse must be reported to families and guardians. Reporting requirements have been modified to better enable TDMHMR to coordinate with other agencies such as Department of Human Services.

The functional role of the Office of Client Services and Rights Protection is delineated. An appeals process for complainants is provided. The new subchapter is proposed as part of the reorganization of all TDMHMR rules

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be use of procedures that ensure that client abuse is closely monitored on a statewide basis. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

These new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 25, 1987

TRD-8710654 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption  
January 4, 1988

For further information, please call  
(512) 465-4670



Subchapter B. Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers

★ 25 TAC §§404.41-404.50

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§404.41-404.50, concerning client abuse and neglect in community mental health and mental retardation centers.

These sections were first proposed in the August 21, 1987, issue of the *Texas Register*. In response to the settlement of *RAJ v. Miller and Lelsz v. Kavanagh*, several substantive modifications and ad-

ditions have been made that necessitate the withdrawal and resubmission of the proposal, to allow for republication for public comment. The notice of the withdrawal is published elsewhere in this issue of the *Texas Register*. These include: the adoption by reference of a document entitled "Procedures and Techniques for Investigation of Abuse and Neglect," in §404.44(g), the stipulation of penalties for failure to report client abuse and neglect in §404.45, the requirement to immediately notify parents, guardians, spouses, or other appropriate relatives of any allegation of abuse; the requirement to submit two copies of the report of investigation to the Office of Client Services and Rights Protection for filing with the Department of Human Services, with further delineation of the report requirements in §404.45; the addition of a new section describing the functional responsibilities of the Office of Client Services and Rights Protection; and the addition of a new section providing an appeals mechanism for complainants not satisfied with the results of the investigation.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be use of procedures that ensure that client abuse is closely monitored on a statewide basis. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

These new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.41. Purpose. The purpose of these sections is to identify and prohibit client abuse and neglect by employees, affiliates, and agents of community mental health and mental retardation centers, and to prescribe principles for its report and prevention.

§404.42. Application. These sections apply to all community mental health and mental retardation centers.

§404.43. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Affiliate—Any school, organization, or entity associated in a working alliance

with a center (by contract)

**Agent**—Any individual not employed by the center but working under the auspices of the center, such as volunteers, consultants, students, etc.

**Alleged**—Pertaining to an event about which an assertion or declaration has been made without proof, and which its maker proposes to support with evidence.

**Center**—A community mental health and mental retardation center.

**Child**—A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

**Client**—Any person receiving services from a community mental health and mental retardation center.

**Commissioner**—The commissioner of the Texas Department of Mental Health and Mental Retardation.

**Community mental health and mental retardation center**—

(1) a community mental health center;

(2) a community mental retardation center; or

(3) a community mental health and mental retardation center, administered by a Board of Trustees appointed pursuant to the Texas Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-201—5547-206), offering services which either alone or in conjunction with other service agencies owned or operated by it, or affiliated by contract with such center, provides an effective mental health or mental retardation services program or both to persons residing in its area.

**Confirmation**—The determination by the executive director that client abuse and neglect has occurred.

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Designee**—Any person temporarily appointed to fulfill duties and assume the responsibilities of another.

**Disabled person**—A person with a mental, physical, or developmental disability between 18 and 65 years of age.

**Elderly person**—A person 65 years of age or older.

**Executive director**—The head of a community mental health and mental retardation center.

**Exploitation**—The illegal or improper act or process of an employee using the resources of a client for monetary or personal benefit, profit, or gain.

**Major physical injury**—Any injury determined to be serious by appropriate medical personnel who examine the client. Examples of major physical injury include, but are not limited to, the following: death; fracture; dislocation of any joint; internal injury; nonsuperficial contusion; concussion; first, second, or third degree burn; or any laceration requiring sutures.

**Minor physical injury**—Any injury determined not to be serious by appropriate

medical personnel who examine the client. Examples of minor physical injury include, but are not limited to, the following: superficial laceration, contusion, or abrasion.

**Negligence**—The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do something that a person of ordinary prudence would have done under the same or similar circumstances.

**§404.44. Client Abuse and Neglect Defined.** Client abuse and neglect shall be classified as follows in accordance with the "Procedures and Techniques for Investigation of Abuse and Neglect," which is herein adopted by reference as Exhibit A and which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) Class I abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which causes or may have caused major physical injury to a client. Without regard to injury, any sexual activity between an employee, employee of an affiliate, or agent and a client will be considered to be Class I abuse.

(2) Class II abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused minor physical injury to a client; exploitation.

(3) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a client, or threaten a client with physical or emotional harm, or any act which vilifies, degrades, or threatens a client with physical or emotional harm.

(4) Neglect means the negligence of any employee, affiliate, or agent which causes or may have caused any physical or emotional injury to a client. Examples of neglect shall include, but are not limited to, failure to carry out a prescribed individual program plan or treatment plan; failure to provide adequate nutrition, clothing, or health care; or failure to provide a safe environment.

(5) Client abuse shall not include:

(A) proper use of restraints or seclusion, the approved application of behavior modification techniques, or other actions taken in accordance with the written policies and procedures of the center;

(B) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to himself, clients, or other persons if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances;

(C) other actions taken in accordance with applicable departmental rules and/or policies and procedures of the community centers.

**§404.45. Administrative Enforcement.** Client abuse or neglect by center

employees, employee of affiliates, and agents is prohibited and shall be grounds for disciplinary action. The center shall be responsible for establishing a mechanism for reporting and investigating alleged cases of client abuse and neglect and initiating appropriate disciplinary or other action in confirmed cases of client abuse and neglect. This mechanism shall include at a minimum:

(1) delineation of the responsibility of each employee, affiliate, or agent to immediately report cases of alleged client abuse or neglect to the executive director or his or her designee. Employees failing to make such reports immediately without sufficient justification to the executive director or his or her designee shall be considered in violation of this section and subject to disciplinary action and possible criminal prosecution;

(2) procedures for the executive director or his or her designee to promptly and objectively investigate each alleged case of client abuse or neglect;

(3) provisions for reporting alleged or suspected cases of client abuse and neglect in accordance with any appropriate laws, as follows.

(A) Criminal acts must be reported to law enforcement agencies. The executive director shall report alleged or suspected client abuse-related crime to local law enforcement agencies.

(B) Any allegation of client abuse or neglect must be reported to the client's parents guardian family. Immediately if possible, and in no case later than 24 hours after the client abuse or neglect incident has been reported, the parent, guardian, spouse, or other appropriate relative of the client who has allegedly been abused or neglected shall be notified. The persons contacted shall also be informed of the results of the final investigation, unless such notification is specifically prohibited by law (Subchapter L of Chapter 405 of this title (relating to Client Rights—Mental Health Facilities) or by rules of the department relating to confidentiality.

(C) Every allegation of client abuse or neglect must be reported to the director, Office of Client Services and Rights Protection, Central Office.

(i) Upon completion of the investigation, the head of the facility shall submit to the director of Client Services and Rights Protection within 10 days of initial allegation of abuse or neglect two copies of the client abuse neglect report, which is adopted by reference as Exhibit B, as well as two copies of the investigation and all supporting documents. Copies of Exhibit B may be obtained from Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(ii) Investigative reports shall include a statement of the allegation, a summary of the investigative methodology, the findings of fact, an analysis of the evidence, the client abuse/neglect committee's finding regarding whether abuse occurred, and any

concerns or other recommendations regarding problems noted during the investigation.

(iii) The executive director shall submit a final report of suspected child abuse and neglect in a child care facility to the Office of Client Services and Rights Protection to be forwarded, as required, to the Office of Youth Care Investigation (attorney general's office) when child abuse is involved. Copies of the forms to be used, adopted by reference as Exhibit C, may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711;

(4) procedures for implementing prompt, proper, and sufficient disciplinary action when a charge of client abuse or neglect is substantiated, based on criteria including, but not limited to:

(A) the seriousness of the client abuse and/or neglect;

(B) the circumstances surrounding the event; and

(C) the employee's record; and

(5) procedures to be followed if it is determined that a client is responsible for abuse of another client.

**§404.46. Responsibilities of the Office of Client Services and Rights Protection.** The Office of Client Services and Rights Protection shall:

(1) monitor statistical trends in abuse and neglect;

(2) review all abuse and neglect investigations;

(3) determine closure on all investigations;

(4) report all allegations of child abuse to the Office of Youth Care Investigation in the attorney general's office;

(5) report all allegations of abuse involving adult clients to the Texas Department of Human Services (DHS); and

(6) make appropriate reports of abuse regarding registered nurses or medical doctors to the respective boards of examiners.

**§404.47. Appeals Process.** A complainant who makes an allegation of client abuse or neglect and wishes to appeal the findings shall request a review of the completed investigation by notifying the Office of Client Services and Rights Protection, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) If the incident involves a client under the age of 18, the complainant may further request a review from the Office of Youth Care Investigation, Attorney General's Office, P.O. Box 12548, Austin, Texas 78711.

(2) If the incident involves a client 18 years or older, the complainant may further contact the Office of Adult Protective Services, Department of Human Services, P.O. Box 2960, Austin, Texas 78769.

**§404.48. Training in Prevention of Client Abuse and/or Neglect.**

(a) Within 60 days after the effective date of these sections, all current employees shall be oriented to the contents of these sections by the executive director or by his or her designee. Within 30 days of the date of employment and, when possible, prior to coming into direct contact with clients, new employees shall receive instruction of the contents of these sections. Acknowledgement of this instruction shall be certified by the employee and filed in his or her personnel file.

(b) Documentation shall be maintained and updated for all employees, affiliates, and agents receiving such training.

(c) All current employees in frequent, direct contact with clients shall receive appropriate instructions on the prevention and management of aggressive behavior. Documentation shall be maintained and updated for employees receiving such instruction.

**§404.49. References.** Reference is made to the following statutes, rules of the department, and attorney general opinions:

(1) Texas Civil Statutes, Article 5547-201;

(2) Texas Civil Statutes, Article 5547-202, §2.12;

(3) Texas Civil Statutes, Article 5547-204;

(4) Texas Civil Statutes, Article 5547-87;

(5) Texas Civil Statutes, Article 695c-2, §9;

(6) Texas Penal Code, Chapters 19 and 21, §§22.01, 22.02, 22.04, 22.05, 22.07, 22.08, and 22.10;

(7) Texas Family Code, §11.01, 34.01, and 34.02;

(8) Human Resources Code, Title 2, Chapter 25;

(9) Human Resources Code, Chapter 48;

(10) Attorney General Opinion Numbers H-237 (1974), H-986 (1977), and H-494 (1975);

(11) Texas Civil Statutes, Article 5547-300.

**§404.50. Distribution.**

(a) The provisions of this subchapter shall be distributed to:

(1) members of the Texas Board of Mental Health and Mental Retardation;

(2) the medical director, deputy commissioners, assistant deputy commissioners, and directors of the central office;

(3) superintendents and directors of all TDMHMR facilities;

(4) chairpersons of the boards of trustees of community mental health and mental retardation centers;

(5) directors of community mental health and mental retardation centers;

(6) the Texas Association for Retarded Citizens;

(7) the Texas Association on Mental Deficiency;

(8) the Parent Association for the Retarded of Texas;

(9) the Texas Association for Mental Health;

(10) the attorney general of Texas;

(11) the Governor's Office of Youth Care Investigation;

(12) the Texas Department of Health;

(13) the Texas Department of Human Services;

(14) the Texas Youth Council;

(15) the Alliance for Mental Recovery; and

(16) Advocacy, Incorporated.

(b) The director of each community mental health and mental retardation center shall be responsible for duplicating and disseminating copies of this subchapter to:

(1) appropriate staff; and

(2) any client, employee, or other person desiring a copy.

(c) The director of each community mental health and mental retardation center shall be responsible for insuring that all employees have access to a copy of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 25, 1987

TRD-8710655

Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption

January 4, 1988

For further information, please call

(512) 465-4670



## Subchapter C. Patient Abuse in Private Psychiatric Hospitals

### ★ 25 TAC §§404.81-404.87

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§404.81-404.87, concerning patient abuse in private psychiatric hospitals. The new sections are proposed contemporaneously with the proposed repeal of the sections it would replace. The new subchapter is identical to the subchapter it would replace except for changes in reporting procedures involving the Department of Human Services.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the

sections will be use of procedures that ensure that client abuse is closely monitored on a statewide basis. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711

These new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§404.81. Purpose.** The purpose of this subchapter is to identify and prohibit patient abuse and neglect by employees, affiliates, and agents of private psychiatric hospitals and to prescribe principles for its report and prevention.

**§404.82. Application.** This subchapter applies to all private psychiatric hospitals licensed by the department under Texas Civil Statutes, Article 5547-88, et seq., other than those operated by community mental health and mental retardation centers.

**§404.83. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Affiliate.** Any school, organization, or entity associated in a working alliance with a hospital (by contract).

**Agent.** Any individual not employed by the hospital but working under the auspices of the hospital, such as volunteers, consultants, students, etc.

**Administrator.** The individual with primary responsibility for day-to-day operation of the hospital.

**Alleged.** Pertaining to an event about which an assertion or declaration has been made without proof, and which its maker proposes to support with evidence.

**Child.** A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

**Confirmation.** The determination by the Office of Client Services and Rights Protection, TDMHMR, that patient abuse or neglect has occurred.

**Department.** The Texas Department of Mental Health and Mental Retardation.

**Designee.** Any person temporarily appointed to fulfill the duties and assume the responsibilities of another.

**Disabled person.** A person with a mental, physical, or developmental disability between 18 and 65 years of age.

**Elderly person.** A person 65 years of age or older.

**Exploitation.** The illegal or improper act or process of an employee using the resources of a patient for monetary or personal benefit, profit, or gain.

**Major physical injury.** Any injury determined to be serious by appropriate medical personnel who examine the patient. Examples of major physical injury include, but are not limited to, the following: fracture; dislocation of any joint; internal injury; nonsuperficial contusion; concussion; first, second, or third degree burn; or any laceration requiring sutures.

**Minor physical injury.** Any injury determined not to be serious by appropriate medical personnel who examine the patient. Examples of minor physical injury include, but are not limited to, the following: superficial laceration, contusion, or abrasion.

**Negligence.** The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do something that a person of ordinary prudence would have done under the same or similar circumstances.

**Patient.** Any person receiving inpatient services from a private psychiatric hospital.

**§404.84. Patient Abuse and Neglect Defined.**

(a) Class I abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or could have caused major physical injury to a patient. Without regard to injury, any sexual activity between an employee, employee of an affiliate, or agent and a patient will be considered to be Class I abuse.

(b) Class II abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused minor physical injury to a patient; and exploitation.

(c) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a patient, or threaten a patient with physical or emotional harm.

(d) Neglect means the negligence of any employee, affiliate, or agent which causes or may have caused any physical or emotional injury to a patient. Examples of neglect shall include, but are not limited to, failure to carry out as prescribed individual program plan or treatment plan, failure to provide adequate nutrition, clothing, or health care; or failure to provide a safe environment.

(e) Patient abuse shall not include:

(1) proper use of restraint or seclusion, the approved application of behavior modification techniques, or other actions taken in accordance with the written policies and procedures of the hospital; or

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to himself, patients, or other persons if such actions are limited to those actions reasonably believed to be necessary under the existing circumstances.

**§404.85. Responsibilities of Administrators.** Patient abuse or neglect by hospital employees, employees of affiliates, and agents is prohibited and shall be grounds for disciplinary action. The hospital shall be responsible for establishing a mechanism for reporting and investigating alleged cases of patient abuse and neglect and initiating appropriate disciplinary action in confirmed cases of patient abuse and neglect. This mechanism shall include at a minimum:

(1) delineation of the responsibility of each employee, affiliate, or agent who has cause to believe that a patient has been or may be adversely affected by abuse or neglect to promptly report such cases as required by the Texas Family Code, §34.01 and §34.02; and the Texas Human Resources Code, §48.036 to the Department of Human Services and to the administrator or his or her designee;

(2) procedures for the administrator or his or her designee to promptly and objectively investigate each alleged case of patient abuse or neglect;

(3) provisions for reporting alleged or suspected cases of patient abuse or neglect in accordance with any appropriate laws, as follows:

(A) All allegations of abuse or neglect must be reported to the Office of Client Services and Rights Protection. If the hospital is licensed by the Texas Department of Human Services to provide services to children, the allegation must also be reported to the Department of Human Services pursuant to the Texas Family Code, §34.01. The Office of Client Services and Rights Protection shall be notified by telephone, (512) 465-4545, within 48 hours of receiving an allegation, or at 8 a.m. on the first succeeding work day for reports received on weekends and holidays. This office may then conduct an investigation which may include the following elements when warranted:

(i) a visit to the hospital;

(ii) interviews with the administrator, other staff, the alleged perpetrator, and victim; and

(iii) review of documentation, such as photographs of injuries, medical reports, patient records, and hospital investigative reports.

(B) Criminal acts must be reported to law enforcement agencies. The administrator shall report alleged or suspected patient abuse-related crime to local law enforcement agencies;

(4) procedures for implementing prompt, proper, and sufficient disciplinary action when a charge of patient abuse or neglect is confirmed. Confirmation of the allegation will be based on a review of the hospital's investigation and/or the findings of the investigation conducted by the Office of Client Services and Rights Protection.

(A) Disciplinary action shall be based on criteria including, but not limited to:

(i) the seriousness of the pa-

tient abuse or neglect.

(ii) the circumstances surrounding the event; and

(iii) the employee's record.

(B) When the administrator determines that patient abuse or neglect has occurred, he or she shall take immediate disciplinary action;

(5) procedures to be followed if it is determined that a patient is responsible for abuse of another patient; and

(6) provisions for preparation of a written report of findings and action taken.

(A) The hospital's investigation shall be completed including the written report within five calendar days of receiving an allegation, two copies of which shall be made available to the Office of Client Services and Rights Protection immediately. The report of investigation and action taken shall be maintained by the hospital for a period of five years. (See Exhibit A, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, Client Services and Rights Protection, P.O. Box 12668, Austin, Texas 78711.)

(B) Final reports of suspected child abuse and neglect shall also be reported on Form 1B, "Office of Youth Care Investigations, Final Report of Suspected Child Abuse and Neglect in a Child Care Facility" and sent to the Office of Client Services and Rights Protection. (See Exhibit B, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, Office of Client Services and Rights Protection, P.O. Box 12668, Austin, Texas 78711.)

**§404.86 Training in Prevention of Patient Abuse and or Neglect**

(a) Within 60 days after the effective date of this subchapter, all current employees shall be oriented to the contents of these sections by the administrator or his or her designee. Within 30 days of the date of employment and, when possible, prior to coming into direct contact with patients, new employees shall receive instruction on the contents of this subchapter. Acknowledgement of this instruction shall be certified by the employee and filed in his or her personnel file.

(b) Documentation shall be maintained and updated for all employees, affiliates, and agents receiving such training.

**§404.87. Notification of Patients of Abuse Reporting Procedures.** All patients shall be notified of procedures to report abuse or neglect and their right to call the Office of Client Services and Rights Protection toll free, (800) 252-8154, if they are victims or observers of abuse or neglect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD 8710656

Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
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For further information, please call  
(512) 465-4670



**Chapter 405. Client (Patient) Care**

**Subchapter G. Client Abuse and Neglect in TDMHMR Facilities**

**★ 25 TAC §§405.361-405.372**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or in the Texas Register office, Room 5031, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§405.361-405.372, concerning client abuse and neglect in TDMHMR facilities. The repeals are proposed contemporaneously with the emergency adoption and the proposal of new sections governing the same matters in Chapter 404, Subchapter A of this title concerning client abuse and neglect in TDMHMR facilities.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the proposed repeals.

Ms Dillard also has determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the repeals will be the repeal and replacement of outdated rules. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§405.361. Purpose.**

**§405.362. Application.**

**§405.363. Definitions.**

**§405.364. Client Abuse and Neglect Defined.**

**§405.365. Prohibition Against Client Abuse and Neglect**

**§405.366. Responsibilities of All TDMHMR Employees**

**§405.367. Responsibilities of Heads of Facilities.**

**§405.368. Client Abuse Committee.**

**§405.369. Prohibition Against Retaliatory Action.**

**§405.370. Staff Training in Prevention of Client Abuse and/or Neglect.**

**§405.371. Distribution.**

**§405.372. References.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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**Subchapter EE. Consent to Treatment with Psychoactive Medication--Mental Retardation Facilities**

**★ 25 TAC §§405.781-405.790**

The Texas Department of Mental Health and Mental Retardation proposes new §§405.781-405.790, concerning consent to treatment with psychoactive medication in mental retardation facilities. The new sections provide procedures to be followed to ensure that every client for whom a psychoactive drug is prescribed is fully informed of the specific benefits and risks of treatment. The new subchapter would also provide a mechanism by which cases of clients who object to such treatment would be reviewed by independent consultant psychiatrists who would determine the appropriateness of the proposed treatment.

Sue Dillard, Office of Standards and Quality Assurance Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mrs. Dillard has also determined that for the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be rules that ensure that clients whose treat-

ment involves taking psychoactive drugs are fully informed of the attendant benefits and risks of the proposed therapy, that clients are provided the opportunity to consent or withhold consent to such treatment, and if withholding consent, clients have benefit of a second opinion by an independent consultant psychiatrist. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, TDMHMR, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

These new sections are proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§405.787 Purpose.** The purpose of this subchapter is to prescribe procedures to be followed in administering psychoactive medications to certain clients receiving services under the auspices of mental retardation facilities of the Texas Department of Mental Health Mental Retardation and to assist in establishing therapeutic alliances between the clients and their treating physicians.

**§405.782 Application.** This subchapter applies to all mental retardation facilities of the Texas Department of Mental Health Mental Retardation and to programs and services provided by contract under their auspices, including those of consultant psychiatrist.

**§405.783 Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Chief physician.** The medical director or clinical director of a state mental retardation facility.

**Chief physician designee.** One physician credentialed by the chief physician to act for and report to the chief physician in matters relating to the prescribing of psychoactive drugs. Such a physician will be other than the treating physician or consultant psychiatrist conducting the initial assessment of the appropriateness of treatment. Such a physician may be another consultant psychiatrist. Such a physician shall have in his or her personnel file a curriculum vitae that documents training or experience that qualifies the physician to assume the chief physician's clinical responsibilities.

**Committed client.**—A client committed to a mental retardation facility involuntarily under the provisions of the Mentally Retarded Persons Act (MRPA), Texas Civil Statutes, Article 5547-300, et seq., or transferred to a mental retardation facility under the provisions of the Mental Health Code, Texas Civil Statutes, Article 5547-1, et seq.

**Consultant psychiatrist.**—A psychiatrist providing services to the facility on a

contract-only basis.

**Emergency.**—A situation which, in the opinion of the treating physician, indicates the possibility of immediate physical or mental deterioration of the client, or indicates the possibility of immediate physical injury or death of the client or other persons in the facility.

**Informed consent.**—Consent given by a person admitted to a mental retardation facility under the voluntary or order of protective custody provisions of the MRPA when each of the following conditions have been met:

(1) **Legal capacity.** The person giving the consent is an adult and has not been adjudicated incompetent to manage his or her personal affairs by an appropriate court of law;

(2) **Receipt of information.** The person giving the consent has been informed of the nature, purpose, risks, and benefits of treatment with psychoactive medication, as well as generally accepted alternatives to such treatment, if any; and

(3) **Voluntariness.** The consent has been given voluntarily.

**Legally authorized representative.**—The parent, managing conservator, or guardian of the person of a minor; or the guardian of the person of an adult.

**Medically appropriate treatment.**—Treatment with psychoactive medication based on a professional judgment that without such medication, the client's condition cannot realistically be expected to improve within a reasonable period of time; or that without such medication, deterioration of the client's condition cannot be prevented; or that without such medication, there is a significant possibility that the client's mental condition will not be stabilized in time to prevent injury to self or other persons.

**Mental retardation facility.**—All state facilities providing 24-hour residential services to persons with mental retardation. The term applies to the campus-based and community-based programs of state schools and state centers, but does not apply to multiple disability units of state hospitals.

**Minor.**—A person under 18 years of age who is not and has not been married or who has not had his or her disabilities of minority removed for general purposes.

**Nurse.**—A person with a current license issued by the Texas State Board of Nurse Examiners to practice professional nursing, with a copy of such license included in his or her personnel record at the time, who is in good standing with said state board.

**Psychoactive medication.**—One which exercises direct effect upon the central nervous system and which is capable of influencing and modifying behavior, cognition, and affective state. Drugs included are Food and Drug Administration and Executive Formulary Committee-approved drugs of the following categories:

(A) antipsychotics (neuroleptics);

(B) antidepressants;

(C) agents for control of mania and depression;

(D) anti-anxiety agents;

(E) sedatives, hypnotics, and other sleep-promoting drugs; and

(F) psychomotor stimulants.

**§405.784 Information Required To Be Given.** Before administering psychoactive medication to any client in a mental retardation facility, the treating physician or nurse shall explain in simple, nontechnical language to the client and/or to the client's legally authorized representative, if the representative is available:

(1) the benefits and the side effects which could reasonably be expected to ensue from treatment with such medication; and

(2) the client's rights under this subchapter.

**§405.785 Who May Give Informed Consent.** Informed consent to administer psychoactive medications may be given by the legally authorized representative of a client admitted under the voluntary or order of protective custody provisions of the Mentally Retarded Persons Act (MRPA) or by the client if he or she meets the criteria for giving informed consent described in §405.783 of this title (relating to Definitions). Persons who have admitted themselves under the voluntary provisions of the MRPA are presumed to have the legal capacity to consent.

**§405.786 Documentation of Informed Consent.**

(a) Informed consent for the administration of psychoactive medication will be evidenced by a copy of the department's form for consent to treatment with psychoactive medication executed by a client admitted under the voluntary or order of protective custody provisions of the Mentally Retarded Persons Act or by the client's legally authorized representative. (Copies of this form, which is herein adopted by reference as Exhibit A, are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.) This executed form will establish a presumption of valid consent and will be retained in the client's record.

(b) If such a client or the client's legally authorized representative consents to the administration of psychoactive medication but refuses or is unable to execute the form, the treating physician will document the consent in the client's record.

(c) The treating physician will discuss the administration of psychoactive medication with all clients for whom such medication has been prescribed, will provide them the explanation described in §405.784 (relating to Information Required To Be Given), and will attempt to create a therapeutic alliance with each client.



§405.787. *Clients Admitted Under the Mentally Retarded Persons Act* Psychoactive medications will not be administered to clients admitted to a mental retardation facility under the voluntary or order of protective custody provisions of the Mentally Retarded Persons Act without informed consent, except as provided in §405.790 of this title (relating to Emergencies).

§405.788. *Clients Committed Under the Mentally Retarded Persons Act.*

(a) The decision to administer psychoactive medication to a committed client during the first 14 days of commitment is within the discretion of the treating physician. The prescription of such medications is governed by the provisions of Chapter 405, Subchapter GG of this title (relating to Prescribing of Psychoactive Drugs).

(b) If, following the initial 14-day period, a committed client or his legally authorized representative objects to the administration of psychoactive medication, or if a legally competent but factually incompetent client objects, the following review procedure will be initiated:

(1) The chief physician or chief physician designee will, within six calendar days of the client's objection or that of the client's legally authorized representative, personally examine the client; interview the client and the client's legally authorized representative, if the representative is available; review the client's records; discuss the case with the treating physician; and make a determination concerning the appropriateness of treatment with psychoactive medication.

(2) Psychoactive medication may be administered if the chief physician or chief physician designee determines that the administration of such medication is medically appropriate treatment. In making this determination, the chief physician or chief physician designee will consider the following factors:

- (A) the accuracy of the diagnosis;
- (B) indications for the medication;
- (C) probable benefits and risks of the medication; and
- (D) the existence and value of alternative forms of treatment, if any.

(3) In addition, the chief physician or chief physician designee will make a determination as to whether the client's ability to understand the consequences of his or her decision to object to the administration of such medication is impaired as a result of his or her mental condition.

(4) If, at any time, the chief physician or chief physician designee determines that the administration of a psychoactive medication is not medically appropriate treatment, the administration of such medication will be discontinued within a reasonable period of time. The period of time within which the medication must be discontinued will be based on the condition of the client and the type and dosage of

medication being administered pursuant to the professional judgment of the treating physician.

(5) If psychoactive medication is administered pursuant to a determination under paragraph (2) of this subsection, the chief physician or chief physician designee will personally monitor the client's progress on a monthly basis to determine whether the administration of psychoactive medication continues to be medically appropriate treatment.

(6) If the chief physician or chief physician designee determines that the administration of psychoactive medication is medically appropriate treatment but also determines that the client's ability to understand the consequences of his or her decision to object to the administration of such medication has not been impaired as a result of his or her mental condition, the head of the mental retardation facility will ensure that a consultant psychiatrist will, within 10 working days, personally examine the client; interview the client and the client's legally authorized representative, if the representative is available; review the client's records; discuss the case with the treating physician and with the chief physician or chief physician designee; and make a determination concerning the appropriateness of treatment with psychoactive medication. The provisions of this section will also apply to those situations in which the decision to object was made by the committed client's legally authorized representative.

(7) If the consultant psychiatrist determines that treatment with psychoactive medication is medically appropriate treatment, such medication may be administered, but the chief physician or chief physician designee will monitor the client's progress as described in paragraph (5) of this subsection.

§405.789. *Documentation* Each step of the procedure described in this subchapter will be clearly documented in the client's record.

§405.790. *Emergencies* Nothing in this subchapter is intended to preclude the administration of psychoactive medication to any client in an emergency as defined herein.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 25, 1987

TRD-8710658      Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
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(512) 465-4670.

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department Chapter 65. Wildlife Subchapter Q. Furbearers

#### ★31 TAC §65.376

The Texas Parks and Wildlife Commission proposes an amendment to §65.376, concerning the statewide fur-bearing animal and trapping proclamation. The amendment prohibits the importation of live raccoons into this state. An identical emergency amendment was adopted by the commission effective September 1, 1987 (12 TexReg 3076).

The mid-Atlantic states are currently having a severe outbreak of rabies in raccoon populations which is thought to be the result of the introduction of raccoons from southern states (principally Florida and Georgia) by hunting clubs. This viral strain of rabies is somewhat host-specific to raccoons, although spillover into other species has occurred. The raccoon viral strain of rabies is not found in this state. The introduction of the raccoon viral strain of rabies into Texas could adversely impact the raccoon population within this state and the associated costs for rabies control would be increased significantly.

The raccoon roundworm, which is believed to be rather widespread throughout the Midwest, can infect man, and two fatal cases in children (Illinois and Pennsylvania) have been documented. Although the incidence of this parasite in Texas is unknown, the risk of spreading this parasite to other captive furbearers or man is enhanced if raccoons are imported into this state.

Jim Dickinson, director of finance, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Dickinson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction of the chance of importation of disease to humans or the native raccoon population. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4974 or 1-800-729-1112, ext. 4974.

The amendment is proposed under the Texas Parks and Wildlife Code, Chapter 71,



which provides the Parks and Wildlife Commission with authority to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property.

§65.376. *General Rules.*

(a)-(i) (No change.)

(j) **The importation of live raccoons is prohibited.**

(1) **No person may import into this state or possess after importation a live raccoon.**

(2) **This section does not prohibit a common carrier from transporting a live raccoon through this state.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 30, 1987.

TRD 8710723 Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption:  
January 8, 1988.  
For further information, please call  
(512) 389-4974.



**TITLE 37. PUBLIC  
SAFETY AND  
CORRECTIONS**

**Part 1. Texas Department of  
Public Safety  
Chapter 21. Equipment and  
Vehicle Standards**

**★37 TAC §21.1**

The Texas Department of Public Safety proposes an amendment to §21.1, concerning standards for vehicle equipment. Subsection (b) is amended by adding and deleting language relating to sun screening devices and labeling requirements for use on motor vehicles. Paragraph (3)(A) is amended by deleting clause (i), renumbering, and adding clauses (ii) and (iii), relating to standards and specifications for use of sun screening devices. Paragraph (3)(B) is amended by adding and deleting language to comply with legislative intent when the manufacturer's model year of the motor vehicle is 1988 and later. Paragraphs (4)(B) and (C) are amended by adding and deleting language regarding manufacturer certification and labeling requirements. Paragraph (7) is added to promulgate the provisions of subsection (b), applicable to motor vehicles if the manufacturer's model year is before 1988. Paragraph (8) is added to pro-

mulgate the provisions applicable to motor vehicles if the manufacturer's model year is 1988 and later.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Virgil Walsmith, captain, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification to the public of the provisions for using one-way glass, sun screening devices, and glazing material for motor vehicles if the manufacturer's model year is before 1988 and for motor vehicle if the manufacturer's model year is 1988 and later. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, PO Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §108A, and the Texas Government Code, §411.004(3) and §411.006(4), which provide the Texas Department of Public Safety with authority to adopt rules necessary for the administration and enforcement of this Act. The Public Safety Commission is authorized to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the commission, shall have the authority to adopt rules considered necessary for the control of the department.

§21.1. *Standards for Vehicle Equipment*

(a) (No change.)

(b) **One way glass and sun screening devices.**

(1)-(2) (No change.)

(3) **Sun screening devices on motor vehicles.**

(A) The following regulations establish standards and specifications for the use of sun screening devices.

(i) **The front side wing vents and windows to the immediate right and left of the driver may be applied with sun screening devices (film materials), that have been certified by the Texas Department of Public Safety, when in conjunction with glazing (vehicle glass) material that has a light transmission of 33% or more plus or minus 3.0% and a luminous reflectance of 35% or less or plus or minus 3.0%. Labeling on these windows must be provided as referred to in paragraph (4)(A) of this subsection. Labeling on wing vents are not required.** [Except as provided in subparagraph (B) of this paragraph, sun screening devices may not be placed on or affixed to the windshield or to a side or rear window of the vehicle so as to obstruct or reduce the driver's clear

view through the windshield or side or rear window.]

(ii) **Side windows which are to the rear of the driver may be applied with sun screening devices in conjunction with glazing (vehicle glass).** [Except as provided by subparagraph (B) of this paragraph, sun screening devices may not be placed on or affixed to the windshield or to a side or rear window of a motor vehicle or any transparent material if the material alters the color or reduces the light transmission of the windshield or side or rear window.]

(iii) **Rear window or windows may be applied with sun screening devices in conjunction with glazing (vehicle glass) if the motor vehicle is equipped with outside mirrors on both left- and right-hand sides of the vehicle that are so located as to reflect to the driver a view of the highway through each mirror for a distance of at least 200 feet to the rear of the motor vehicle.**

(B) This paragraph does not apply to a windshield that has a sun screening device that:

(i) **has a light transmission of not less than 33%** [a front side wing vent or window that has a sun screening device, in conjunction with safety glazing material, that has a light transmission of 35% or more plus or minus 3.0% and a luminous reflectance of 35% or less plus or minus 3.0%];

(ii) **has a luminous reflectance of not more than 35%** [a side window to the rear of the driver, or a rear window, that has a sun screening device, in conjunction with safety glazing material, that has a luminous reflectance of 35% or less plus or minus 3.0% and a light transmission of 35% or more plus or minus 3.0%];

(iii) **is not red or amber in color; and** [a rear window if the motor vehicle is equipped with outside mirrors on both the left and right sides of the vehicle that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle;]

(iv) **does not extend downward beyond the AS-1 line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield.** [a rearview mirror;

(v) an adjustable non-transparent sun visor mounted forward of the side windows and not attached to the glass;

(vi) a direction, destination, or termination sign on a passenger common carrier motor vehicle, if the sign does not interfere with the driver's clear view of approaching traffic;

(vii) a rear window wiper motor; and

(viii) a rear trunk lid handle or hinge.]

(4) **Manufacturer requirements.**

(A) (No change.)

(B) Each manufacturer shall include instructions with the product or ma-

material for proper installation, including the affixing of the label. **At a minimum, one window** [The labeling] shall **have** [be] placed in the left lower corner **between the sun screening devices and the glass, a label legible from the outside of the vehicle** [of each glazing (vehicle glass) surface required to be labeled when facing the vehicle from the outside].

(C) Each manufacturer shall obtain certification of sun screening devices used on the front side wing vents and windows that certifies to the Texas Department of Public Safety that the product or material he or she manufactures or assembles is in compliance with the reflectivity and transmittance requirements [shall conform to

department standards in that the product or material he manufactures or assembles is in compliance with the luminous reflectivity and light transmittance specifications] of this section.

(5)-(6) (No change.)

**(7) The provisions this subsection are applicable to motor vehicles if the manufacturer's model year is before 1988.**

**(8) Manufacturer's model year of a motor vehicle 1988 and later shall comply with the provisions of Texas Civil Statutes, Article 6701d, Article 14, §134B and §134C, and labeling requirements promulgated in paragraph (4)(B) of this subsection.**

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710736

Leo E. Gossett  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption:

January 8, 1988

For further information, please call  
(512) 465-2000





# Adopted

## Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

### TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

#### Chapter 7. Pesticides

##### ★4 TAC §7.8

The Texas Department of Agriculture adopts an amendment to §7.8, without changes to the proposed text published in the October 27, 1987, issue of the *Texas Register* (12 TexReg 3954).

The amendment is made in accordance with statutory limit is set forth in the Texas Agriculture Code, §76.073. The increase in the dealer license fee will bring that fee in line with fees for other licensing requiring the same or similar staff resources. All other pesticide and herbicide licensing and registration fees requiring similar staff resources are now \$100 or more.

The amendment increases the fee for pesticide and joint pesticide/herbicide dealers from \$50 to \$100

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §76.073 and §75.004, which provides the Texas Department of Agriculture with the authority to set and collect an annual fee of no more than \$100 for the issuance of a pesticide or herbicide dealer license.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 30, 1987.

TRD-8710748 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Effective date: December 21, 1987  
Proposal publication date: October 27, 1987  
For further information, please call  
(512) 463-7583.



#### Chapter 11. Herbicide Regulations

##### ★4 TAC §11.7

The Texas Department of Agriculture

adopts an amendment to §11.7, without changes to the proposed text published in the October 27, 1987, issue of the *Texas Register* (12 TexReg 3954).

The amendment is made in accordance with the statutory limits set forth in the Texas Agriculture Code, §75.004. The increase in the fee for dealer licenses will bring that fee in line with fees for other licenses requiring the same or similar staff resources. All other pesticide and herbicide licensing registration fees requiring same or similar staff resources are now \$100 or more.

The amendment increases the fee for herbicide dealer licenses from \$50 to \$100.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §75.004, which provides the Texas Department of Agriculture with the authority to set and collect an annual fee of no more than \$100 for the issuance of a herbicide dealer license.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 30, 1987

TRD-8710747 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Effective date: December 21, 1987  
Proposal publication date: October 27, 1987  
For further information, please call  
(512) 463-7583



### TITLE 7. BANKING AND SECURITIES

#### Part III. State Banking Board

#### Chapter 31. Miscellaneous

##### ★7 TAC §31.2, §31.3

The State Banking Board adopts amendments to §31.2 and §31.3, without changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 3903).

The amendments extend the applicability of the board's procedural rules governing charter applications to encompass applications for trust company charters.

The amendments make trust company charter applications subject to the same procedural rules and regulations as are state bank charter applications and all other contested cases before the Banking Board

No comments were received regarding adoption of the amendments

The amendments are adopted under the Texas Banking Code, Articles 342-115 and 342-1106, which provide the Banking Board with the authority to promulgate and adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 30, 1987

TRD-8710755 Jorge A. Gutierrez  
General Counsel  
State Banking Board

Effective date: December 22, 1987  
Proposal publication date: August 21, 1987  
For further information, please call  
(512) 479-1200



#### Chapter 33. Procedure for Hearings

##### ★7 TAC §§33.2, 33.61, 33.106

The State Banking Board adopts amendments to §§33.2, 33.61, and 33.106. Section 33.106 is adopted with changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2768). The other sections are adopted without changes and will not be republished.

The amendments clarify the applicability of the board's procedural rules to applications for trust company charters, as well as applications for state bank charters.

The amendments establish the form, procedure, and notice requirements govern-

ing applications for trust company charters and state bank charters

One comment was received on the proposed amendments. Scott Blech, executive director, Trust Financial Services Division of the Texas Bankers Association, suggested that the notice requirements for trust company charter applications be extended to include notice to all state and national banks with trust powers located within the county of the proposed trust company. The board agrees and has incorporated this change in §33.106

The amendments are adopted under the Texas Banking Code, Article 342-115 and 342-1106, which provides the Banking Board with the authority to promulgate and adopt rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

§33.106. *Notice of Hearing.*

(a) Within seven days after official filing of an application, the commissioner shall mail notice of such application and hearing date to all state and national banks within the proposed community or any adjacent or adjoining area that may be affected by the proposed bank. In the case of trust company charter applications, the commissioner shall mail notice to all trust companies and to all state and national banks having trust powers within the county in which the applicant proposes to locate.

(b) The commissioner shall forward a public notice of hearing to the applicant, or his agent, who shall cause same to be published in a newspaper of general circulation in the county where the proposed bank or trust company is to be located. The applicant shall cause the notice of hearing to be published on a date not less than 30 days before the date of the hearing.

(c)-(d) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 30, 1987

TRD-8710757

Jorge A. Gutierrez  
General Counsel  
State Banking Board

Effective date: December 22, 1987

Proposal publication date: August 21, 1987

For further information, please call  
(512) 479-1200

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 402. Client Assignment and Continuity of Services

Subchapter C. Transfer to Vernon Maximum Security Unit

★ 25 TAC §§402.71-402.86

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§402.71-402.86. Sections 402.75-402.78 and 402.82 are adopted with changes to the proposed text in the August 21, 1987, issue of the Texas Register (12 TexReg 2782-2785) Sections 402.71-402.74, 402.79-402.81, and 402.83-402.86 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the repeal of the two subchapters they would replace: Chapter 405, Subchapter I of this title; and Chapter 405, Subchapter N of this title.

The new sections are adopted pursuant to House Bill 1503, 70th Legislature, 1987, which provides for the transfer of the TDMHMR maximum security unit from Rusk State Hospital to Vernon State Hospital. As required by House Bill 1503, the new subchapter adopts by reference TDMHMR's memorandum of understanding with the Texas Department of Corrections

In §402.75(a)(6), the term "security guards" has been replaced with the term "ward staff." In the same subsection, paragraph (8) has been revised to require a current psychiatric evaluation, with mental status and psychiatric evaluation completed at admission. Terminology in paragraph (9) of the same subsection has been revised from the term "chemotherapy" to the term "medication regimen."

In §402.76(b), language has been revised to require the board to conduct a personal interview of the client unless the client objects.

Paragraphs (1) and (2) of §402.77(g), have been deleted. Seclusion is addressed in Chapter 405, Subchapter F. In the same subsection, a sentence has been added indicating that the review board physician may write seclusion orders if clinically necessary.

In §402.78(b), language has been revised to require the board to conduct a personal interview of the client unless the client objects.

Section 402.82(b)(2) has been changed to clarify that the commissioner's determination of whether a client charged with

capital murder, murder, or attempted murder is manifestly dangerous is final.

Comments on the proposed sections were received from Advocacy, Incorporated, which recommended that the 60-day time limit on the final decision by the board for the determination of manifest dangerousness be reinstated. The department responds that the time limit was deleted because such determinations generally are made on the same day that the board meets and would not involve delays of several days. The time limit of 60 days was originally based on general procedures for administrative hearings and is not appropriate for this application.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§402.75. *Information and Records To Be Furnished to the Review Board by the Superintendent*

(a) The superintendent shall provide all necessary information and records regarding the client to the review board, including:

- (1) name of client, date of admission, and age;
- (2) date and full description of the alleged incident or incidents of behavior believed to indicate that the client is manifestly dangerous;
- (3) complete current medical record, with past medical record available on request;
- (4) complete social history;
- (5) all psychological test materials and findings;
- (6) observational reports of nursing service, ward staff, and other staff members;
- (7) physical and neurological examination results;
- (8) current psychiatric evaluation to include mental status and psychiatric evaluation completed at admission; and
- (9) current medication regimen.

(b) If the client's treatment team is of the opinion that there are portions of the client's records which would be harmful to the client if viewed by him, then the treatment team shall advise the review board psychiatrist or physicians of the existence of such records. If the review board psychiatrist or physicians concur with the treatment team's opinion that portions of the client's records would be harmful to the client if viewed by him, the review board psychiatrist or physician may withhold such harmful portions and shall document the reasons for doing so. However, the client retains the right to select a mental health professional of similar qualifications who may exercise his professional judgment in choosing to disclose the portions so designated as harmful.

§402.76. *Procedures for the Determination of Manifest Dangerousness by Facility Review Boards.*

(a) The facility review board shall review the information available on each client and shall conduct a hearing to determine whether the client is manifestly dangerous as required by §402.77 of this title (relating to Transfer of Clients Who Are Determined To Be Manifestly Dangerous to the Maximum Security Unit at the Vernon State Hospital).

(b) The facility review board shall, before rendering its decision, conduct a personal interview of each client unless the client objects in such manner as shall be determined by the facility review board.

(c) No member of the client's treatment team shall be present during the interview of the client or hearing unless:

(1) the presence of a treatment team member is requested by the facility review board,

(2) the client desires to have a member of the treatment team present; or

(3) the treatment team member is called as a witness by the client or his counsel or representative

(d) The facility review board shall determine whether or not each client is manifestly dangerous by unanimous vote and shall prepare a written decision specifying the reasons for the determination. The written decision by the facility review board shall comply in all respects with §402.82 of this title (relating to Decision and Request for New Hearing by Superintendent or Client)

(e) The written report of each decision of the facility review board shall be filed in the permanent clinical record of the client. A copy of the decision shall also be sent to the deputy commissioner for mental health.

(f) In the event that any decision of the facility review board is not unanimous, any member of the facility review board may prepare a written dissent, stating the reason for such dissent. Such dissent shall also be filed in the client's permanent clinical record and a copy shall be provided to the superintendent and the chairperson. A copy of the written dissent shall also be sent to the deputy commissioner for mental health.

**§402.77. Transfer of Clients Who are Determined To Be Manifestly Dangerous to the Maximum Security Unit at the Vernon State Hospital.**

(a) A client may be transferred from a state mental health facility to the maximum security unit at the Vernon State Hospital only if determined to be manifestly dangerous by the facility review board of the transferring facility pursuant to subsections (b) or (c) of this section.

(b) When the superintendent is of the opinion that the client is manifestly dangerous and requires transfer to the maximum security unit at the Vernon State Hospital, he will inform the facility review board, which will give notice and hold a hearing in accordance with the procedures specified and the rights granted by this subchapter.

(c) When a client is transferred to the maximum security unit at the Vernon State Hospital, he may not be held there without a determination of manifest dangerousness by the maximum security unit review board after notice (in accordance with §402.79 of this title (relating to Notice of Hearing)) and hearing in accordance with the procedures specified in and rights granted by the rules under which the review board conducting the hearing was organized.

(d) The maximum security unit review boards shall conduct new hearings in accordance with §402.82 of this title (relating to Decision and Request for New Hearing by Superintendent or Client) for all clients transferred to the maximum security unit at the Vernon State Hospital pursuant to subsection (b) of this section. Clients transferred pursuant to this subchapter shall have a hearing before the maximum security unit review board within 60 days of their arrival at the maximum security unit at the Vernon State Hospital. Upon a finding that the client is not manifestly dangerous, he shall be returned to the transferring facility. Such transfer shall occur no later than 30 days after the client is determined to be not manifestly dangerous.

(e) If a client is returned to the transferring facility pursuant to subsections (c) or (d) of this section, he may not be made subject to another hearing under this section unless the superintendent has cause to believe that a change in the client's condition is sufficient to warrant a new hearing.

(f) In order for a client to be transferred to the maximum security unit at the Vernon State Hospital under subsection (b) of this section, there must be evidence submitted to the facility review board that all available treatment programs have been attempted with no significant results.

(g) The facility from which the client was transferred under subsection (b) of this section shall be responsible for all transportation of that client required by this section. The review board physician may write seclusion orders if clinically necessary.

(h) No person who is voluntarily admitted to a facility of the department shall be transferred to the maximum security unit at the Vernon State Hospital under these procedures.

**§402.78. Procedure for the Determination of Manifest Dangerousness by a Review Board at the Maximum Security Unit at Vernon State Hospital.**

(a) A review board shall review the information available on each client and shall conduct a hearing to determine whether the client is manifestly dangerous, as required by the Texas Code of Criminal Procedure, Article 46.02, §8(a), and Article 46.03, §4(b).

(b) A review board shall, before rendering its decision, conduct a personal interview of each client unless the client objects in such manner as shall be determined by the review board.

(c) No member of the staff of the maximum security unit at the Vernon State Hospital shall be present during the hearing unless requested by a review board or the client being reviewed.

(d) No member of the staff of the maximum security unit at the Vernon State Hospital shall be present during the interview of the client unless requested by a review board or the client being reviewed.

(e) No member of the staff of the maximum security unit at the Vernon State Hospital shall be present during the deliberations of the review board following the client interview unless requested by a review board.

(f) A review board shall determine whether or not each client interviewed is manifestly dangerous. In order for a client to be declared not manifestly dangerous, the decision of the review board must be unanimous. A review board shall prepare a written decision specifying the reason for the determination

(g) The written report of each decision of a review board shall be filed in the permanent clinical record of the client. A copy of the decision shall also be sent to the deputy commissioner for mental health.

(h) In the event that any decision of a review board is not unanimous, any member of the review board may prepare a written dissent, stating the reason for such dissent. Such dissent shall also be filed in the client's permanent clinical record and a copy shall be provided to the superintendent and the chairperson. A copy of the written dissent shall also be sent to the deputy commissioner for mental health.

(i) A review board shall conduct new hearings on clients at intervals required or authorized by §402.82 of this title (relating to Decision and Request for New Hearing by Superintendent or by Client).

(j) A client who is determined to be not manifestly dangerous and who has or had charges of capital murder, murder, or attempted murder pending against him shall be transferred to the nonsecurity facility designated by the commissioner.

**§402.82. Decision and Request for New Hearing by Superintendent or Client.**

(a) Facility review board. The facility review board shall render a written decision.

(1) In the event the superintendent or the client disagrees with the decision of the facility review board, he may appeal to the deputy commissioner for a final decision. The transfer, if ordered, does not have to be stayed pending appeal.

(2) A client transferred to the maximum security unit at the Vernon State Hospital under the provisions of this subchapter may have a hearing before the maximum security unit review board at any time upon recommendation of the staff of the maximum security unit.

(3) A client transferred to the maximum security unit at the Vernon State Hospital under the provisions of this sub-

chapter shall have a hearing before the maximum security unit review board within 60 days of transfer and shall have a hearing every six months thereafter.

(b) Maximum security unit review board. The review board shall render a written decision.

(1) In the event the superintendent disagrees with the determination of the review board, he may then refer the matter to the commissioner who will make the determination of whether the client is manifestly dangerous.

(2) If a client who has or had charges of capital murder, murder, or attempted murder pending against him is determined by a review board to be not manifestly dangerous, the superintendent shall refer the matter to the commissioner who will make the final determination of whether the client is manifestly dangerous.

(3) The superintendent may request a new hearing by a review board at any time, provided that the superintendent has cause to believe that a change in the client's condition is sufficient to warrant a new hearing.

(4) The client may request a new hearing by a review board and shall be afforded a new hearing upon a showing of good cause therefore.

(5) A review board may grant a new hearing at any time upon request of the superintendent or upon its own motion.

(6) If a client has initially been found to be manifestly dangerous and is subsequently found to be not manifestly dangerous, the client shall be transferred to a nonsecurity unit within 30 days of the decision of the review board.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710659 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: March 1, 1988  
Proposal publication date: August 21, 1987  
For further information, please call  
(512) 465-4670.

Chapter 404. Protection of  
Clients and Staff  
Subchapter G. Unusual Incidents  
at TDMHMR Facilities

★ 25 TAC §§404.241-404.256

The Texas Department of Mental Health and Mental Retardation adopts new §§404.241-404.256. Section 404.245 is adopted with changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg

2789). Sections 404.241-404.244 and 404.246-404.256 are adopted without changes and will not be republished. The new subchapter is adopted contemporaneously with the repeal of Chapter 405, Subchapter C of this title.

Section 404.245(c), has been changed to require client injury forms to be filed with the facility safety officer, not in the client record.

Public comments were received from Advocacy, Incorporated, Austin, which recommended that the new subchapter be expanded to include how reports on unusual incidents will be analyzed. The department responds that language has been added in §404.245(d).

Regarding §404.426, Advocacy, Incorporated commented that providing staff training is very good and such training should be provided to any employee expressing an interest. The department responds that every employee with direct client contact is required to have such training and that any employee may participate in the training program at anytime.

The new subchapter is adopted under Texas Civil Statutes, Article 5547-202, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§404.245. *Reporting Serious or Nonserious Injury to a Client, Guest, or an Employee.*

(a) All serious and nonserious job-related injuries to an employee shall be recorded by the employee's supervisor on the supervisor's report of employee's injury form, which is referred to as Exhibit A in §404.254 of this title (relating to Exhibits). This reporting form shall also be used to report injuries to a guest. A copy of Exhibit A shall be filed in the personnel record of the employee, or the record established for guests.

(b) The death of an employee, and a job-related illness or injury to an employee which occurs in the course of his official duties, and which causes out of pocket expenses to the employee (i.e., illness or injury other than those treated solely by a physician employed by the facility), or an absence from work for more than one workday, shall be reported by the worker's compensation claims coordinator on the employer's first report of injury or illness form which is referred to as Exhibit B in §404.254 of this title (relating to Exhibits), as required by the State Employees-Workers Compensation Division of the attorney general's office. If the employee suffers a serious illness or injury, or if the illness or injury results in the death of the employee, copies of the report shall be mailed to the legal division of the central office and to the appropriate deputy commissioner.

(c) All serious and nonserious injuries to a client shall be reported on Exhibit C, which is referred to in §404.254 of this title

(relating to Exhibits). The original client injury form shall be filed with the facility safety officer.

(d) The facility safety officer will analyze trends in client injuries and will make recommendations for corrective action where appropriate to the superintendent. The safety officer will monitor the implementation of any corrective measures to be taken and will evaluate their effectiveness. The safety officer will report all trends in individual client injuries to the client's qualified mental retardation professional or treatment team for corrective action.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710660 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: December 16, 1987  
Proposal publication date: August 21, 1987  
For further information, please call  
(512) 465-4670.

Chapter 405. Client (Patient)  
Care  
Subchapter C. Unusual Incidents  
at Institutions

★ 25 TAC §§405.51-405.66

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.51-405.66, without changes to the proposal published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2791-2792).

The repeals are adopted contemporaneously with the adoption of new Chapter 404, Subchapter G, governing unusual incidents at TDMHMR facilities.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710661 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: December 16, 1987  
Proposal publication date: August 21, 1987  
For further information, please call  
(512) 465-4670.



Subchapter I. Review Bonds  
(Skyview Maximum Security  
Unit at Rusk State Hospital)  
for Making a Determination of  
Manifest Dangerousness

★ 25 TAC §§405.191-405.222

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.191-405.222, without changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2792).

The repeals are adopted contemporaneously with the adoption of new Chapter 402, Subchapter C, concerning transfer to Vernon Maximum Security Unit, pursuant to House Bill 1503, 70th Legislature, 1987.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710662 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: March 1, 1988  
Proposal publication date: August 21, 1987  
For further information, please call  
(512) 465-4670.



Subchapter N. Transfer of Court-  
Committed Patients to the  
Skyview Maximum Security  
Unit at Rusk State Hospitals

★ 25 TAC §§405.321-405.351

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.321-405.351, without changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2792-2793).

The repeals are adopted contemporaneously with the adoption of new Chapter 402, Subchapter C, concerning transfer to Vernon Maximum Security Unit, pursuant to House Bill 1503, 70th Legislature, 1987.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and

Mental Retardation with rulemaking powers.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710663 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: March 1, 1988  
Proposal publication date: August 21, 1987  
For further information, please call  
(512) 465-4670.



TITLE 37. PUBLIC  
SAFETY AND  
CORRECTIONS

Part I. Texas Department of  
Public Safety

Chapter 3. Traffic Law  
Enforcement

Traffic Supervision

★ 37 TAC §3.59

The Texas Department of Public Safety adopts the repeal of §3.59, without changes to the proposed text published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3536).

The department is repealing the existing regulation governing the transportation of hazardous materials to change language to comply with the current statutory amendments.

The department adopts the repeal due to recent enactment of legislation requiring substantial amendments and additional language. This action is being filed simultaneous with an adoption of a new section concerning regulations governing transportation safety which covers hazardous materials and motor carrier safety.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6701d, §139, which provide the director of the Department of Public Safety with the authority to adopt such regulations as he deems necessary for the safe transportation of hazardous materials over the highways of the State of Texas.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710738

Leo E. Gossett  
Director  
Texas Department of  
Public Safety

Effective date: December 21, 1987  
Proposal publication date: October 2, 1987  
For further information, please call  
(512) 465-2000.



The Texas Department of Public Safety adopts new §3.59, with changes to the proposed text published in the October 2, 1987 issue of the *Texas Register* (12 TexReg 3537).

The new section administers the provisions of House Bill 908, 70th Legislature, 1987. The department adopts by reference applicable parts of the Code of Federal Regulations concerning hazardous materials and motor carrier safety.

This new section is applicable to commercial vehicles and operators of commercial vehicles with an actual or registered gross weight in excess of 10,000 pounds and also vehicles and operators transporting hazardous materials requiring placarding. Subparagraphs (F) and (G) are added to subsection (b)(1), concerning the definition of farm vehicle and private carrier for adoption. Subsection (b)(2)(A) is changed by adding and deleting language to clarify the applicability of registered or actual gross weight in excess of 10,000 pounds. Language is also added to subsection (b)(2)(A), which provides an exemption to the Federal Motor Carrier Safety Regulations for farm vehicles when the registered or actual gross weight does not exceed 48,000 pounds.

Written comments against the new section were received from Texas Cotton Ginners' Association, Texas Farmers Union, Texas Farm Bureau, and the City of Austin, suggesting changes, exemptions, and clarification.

The Texas Cotton Ginners' Association submitted comments suggesting an additional educational period extending until March 1, 1988, and a comment that the chain bottom bed of the Cotton Module Transporter offered adequate protection from a shifting module load that equaled or exceeded the options listed in the Federal Motor Carrier Safety Regulations. Another comment sought clarification of the logging requirements as they pertain to farmers.

The Texas Farmers Union submitted comments requesting an exemption from the hours of service and medical qualification as they pertain to the family farmer.

The Texas Farm Bureau submitted comments requesting an exemption for farm-type vehicles, stating that adoption without a farm exemption would create an excessive burden on agriculture.

The City of Austin submitted comments requesting deletion of §391.11(b)(2) from the list of exempted sections, and suggested adoption of language which would require drivers of vehicles transporting hazardous materials be able to read and speak the English language sufficiently to understand highway traffic signage and to respond to official inquiries. The City of Austin also made a statement of general support to the proposed section.

The Texas Department of Public Safety agrees with the Texas Cotton Ginners' Association that the chain bottom bed of a cotton module transporter should offer adequate protection from shifting loads thus complying with 49 Code of Federal Regulations Chapter 1, Part 393.100, Option D. In the event the chain bottom bed of a cotton module transporter fails to prevent shifting of loads, the department will require other options be pursued. The department does not agree that an extension of the four-month educational period, from September 1, 1987 until December 31, 1987, should be extended because educational seminars have been held and more are scheduled. Also, trade magazines and newspapers have published notification. Department troopers have issued over 30,000 inspections and warnings to drivers of commercial vehicles and will continue to do so until January 1, 1988.

The Texas Department of Public Safety agrees with the Texas Farmers Union and the Texas Farm Bureau that total adoption of the Motor Carrier Safety Regulations could create an undue hardship on the farm and ranch community. The department is submitting language in the adoption to exempt the farm or ranch vehicle that does not exceed 48,000 pounds from the Motor Carrier Safety Regulations. The department has determined that all requirements as promulgated by §395.8(l)(1)(i)-(v) of the Federal Motor Carrier Safety Regulations must be met to qualify for the 100 air-mile radius exemption from logging. The department does not agree with comments from the City of Austin requiring drivers of vehicles transporting hazardous materials to read and speak English. The Texas Driver's License Program administered by the department does not require an applicant for a driver's license to read or speak English, but does not require knowledge of traffic signage. Additionally, 49 Code of Federal Regulations Chapter 1, requires sufficient documentation and placarding to accompany each transportation of hazardous materials.

The new section is adopted under Texas Civil Statutes, Article 6701d, §139, which provide the director of the Department of Public Safety with the authority to adopt such regulations as he deems necessary to administer the provisions of the hazardous material and motor carrier safety transportation enforcement.

### §3.59. Regulations Governing Transportation Safety.

(a) Federal regulations adopted. On September 28, 1973, the director of the Texas Department of Public Safety adopted the Federal Hazardous Materials Regulations, Parts 171-173, 177, and 178 and adopts by reference, effective January 1, 1988, the Federal Motor Carrier Safety Regulations, Parts 390-393 and 395-397 of 49 Code of Federal Regulations Chapter 1, including all amendments and interpretations thereto.

(b) Explanations and exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Civil Statutes, Article 6701d, §2(o);

(B) the definition of hazardous material shipper will be the same as that given in Texas Civil Statutes, Article 6701d, §2(p);

(C) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) regional highway administrator means the director of the Texas Department of Public Safety;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms common carrier by motor vehicle or contract carrier by motor vehicle who or which transports by motor vehicle property of which person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

(2) Specific explanations and exceptions concerning the adoption of the Federal Motor Carrier Safety Regulations are as follows.

(A) The Federal Motor Carrier Safety Regulations will be applicable to all vehicles defined as motor vehicles in the Code of Federal Regulations Part 390.1, when they are required to display hazardous materials placards as stipulated in the hazardous materials regulations and to all other motor vehicles and/or combination of such vehicles so defined when they have a registered or actual gross weight in excess of 10,000 pounds; except that the federal motor carrier safety regulations shall apply to a farm vehicle operated intrastate as defined in paragraph (1)(F) of this subsection, when the registered or gross weight exceeds 48,000 pounds.

(B) The following sections of the parts of the Code of Federal Regulations adopted in subsection (a) of this section are

not adopted by the Texas Department of Public Safety: §§390.33, 390.40, 391.2(a), 391.11(b)(1), 391.11(b)(2), 392.1(c), 393.1(b), 396.1(b), and 397.1(c).

(C) Texas Civil Statutes, Article 6701d, §132(b) and (c), concerning brakes on trailers weighing 15,000 pounds gross weight or less takes precedence over the brake requirements in the federal regulations for trailers of this gross weight specification.

(D) Peace officers of any Texas city having a population of 300,000 or more are considered to be certified by the Texas Department of Public Safety and eligible to enforce the Federal Motor Carrier Safety Regulations, provided each officer enforcing the Federal Motor Carrier Safety Regulations must have completed a course of training of which the curriculum and instructors have been approved by the director of the Texas Department of Public Safety. Peace officers requesting certification as required in this subparagraph shall submit to the Texas Department of Public Safety a schedule of the courses to be taught, including identification of the instructor(s).

(E) Under this section, the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under the Code of Federal Regulations Part 391.41(b)10, provided the person meets the vision standards adopted by the Texas Department of Public Safety in §15.51 of this title (relating to Vision Tests).

(i) Applications for a waiver under subparagraph (E) of this paragraph shall not be accepted by the Texas Department of Public Safety after January 1, 1990.

(ii) Waivers granted under subparagraph (E) of this paragraph are renewable provided the applicant continues to meet vision standards adopted by the Texas Department of Public Safety in §15.51 of this title (relating to Vision Tests).

(F) The enforcement dates for this section are as follows:

(i) Parts 390, 392, 393, 396, and 397, effective January 1, 1988;

(ii) Part 391, effective January 1, 1989; and

(iii) Part 395, effective June 1, 1988.

(3) Specific explanations and exceptions concerning the adoption of the Federal Hazardous Materials Regulations are as follows.

(A) The Federal Hazardous Materials Regulations, adopted herein, will apply to vehicles transporting hazardous materials as a cargo or part of a cargo when operated upon the streets and highways of this state.

(B) All references in 49 Code of Federal Regulations Chapter 1, Parts 171-173, 177, and 178, made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(C) Regulations adopted by this

department, other than placarding requirements and the Federal Motor Carrier Safety Regulations, will not apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm when such tank trailers were manufactured or assembled prior to January 1, 1974.

(D) The reporting of hazardous material incidents as required by federal regulations has not been adopted, and, therefore, is not required by the Texas Department of Public Safety; however, reporting requirements required by Texas Civil Statutes will be applicable.

(E) Regulations adopted by this department, other than placarding, shipping papers, fire extinguisher, and the Federal Motor Carrier Safety Regulations requirements do not apply to cargo tanks having a capacity of 3,000 gallons or less and used to transport flammable liquids, provided the tank was manufactured or assembled prior to January 1, 1982. All cargo tanks having a 3,000 gallon capacity or less and used to transport flammable liquids manufactured or assembled on or after January 1, 1982, will be required to meet all specifications and regulations for such tanks as required in 49 Code of Federal Regulations Chapter 1, Parts 171-173, 177, and 178.

(4) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Civil Statutes, Article 6701d, §139(h) and (j), and not those stated in the Code of Federal Regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1987.

TRD-8710737      Leo E. Gossett  
Director  
Texas Department of  
Public Safety

Effective date: December 21, 1987  
Proposal publication date: October 2, 1987  
For further information, please call  
(512) 465-2000.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 10. Family Self-Support Services

#### Child Day Care Services

#### ★ 40 TAC §10.3190

The Texas Department of Human Services (DHS) adopts new §10.3190, without changes to the proposed text published in the October 30, 1987, issue of the *Texas Register* (12 TexReg 4003).

The section is adopted to comply with legislation passed by the 70th Legislature, 1987.

The section contains the requirement that certain day care centers must establish parent advisory committees.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 2, 1987.

TRD-8710800      Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: January 1, 1988  
Proposal publication date: October 30, 1987  
For further information, please call  
(512) 450-3765.

◆      ◆      ◆

## Chapter 23. Nursing Facility Administration

### Subchapter L. General Policies

#### ★ 40 TAC §§23.1116-23.1119

The Texas Department of Human Services (DHS) adopts the repeal of §§23.1116-23.1119, without changes to the proposed text published in the October 30, 1987, issue of the *Texas Register* (12 TexReg 4003).

The department is taking this action to ensure that sections concerning nursing facility administration accurately reflect program operations.

The repealed sections delete policy about registration of retirement homes which is no longer a function performed by DHS.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 2, 1987.

TRD-8710799      Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: December 23, 1987  
Proposal publication date: October 30, 1987  
For further information, please call  
(512) 450-3765

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## State Board of Insurance Exempt Filings

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### State Board of Insurance Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.*

*These actions become effective 15 days after*

*the date of publication or on a later specified date.*

*The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)*

The State Board of Insurance has considered a request by the United States Fire Insurance Company to revise the effective date of the rate revisions and optional additional deductible of \$10,000 applicable to the currently approved Insurance Agents Errors and Omissions Liability Program originally approved by Board Order 51724.

It was requested that the effective date of the rate revisions and optional addi-

tional deductible of \$10,000 become effective February 1, 1988, instead of December 1, 1987.

It is the board's opinion and the board finds that a clear and compelling necessity requires that Board Order 51724 be amended on an emergency basis. The reason for the emergency is to allow carriers sufficient time to incorporate the rate revision into their renewal policies. This revision is adopted under the authority of the Insurance Code, Article 5.97, including provisions for adoption on an emergency basis under §(c) and §(j).

It is therefore the order of the State Board of Insurance that Board Order 51724 be and the same is hereby amended so that

the approval contained in that order be effective on February 1, 1988.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on November 30, 1987.

TRD-8710740

Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Name: Shana Meek

Grade: 6

School: Maedgen Elementary, Lubbock

Effective date: November 30, 1987  
For further information, please call  
(512) 463-6327.



# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

## Texas Air Control Board

**Friday, December 11, 1987, 10 a.m.** The Regulation Development Committee of the Texas Air Control Board will meet in Room 332, 6330 Highway 290 East, Austin. According to the agenda, the committee will review and discuss revisions to regulation V and the state implementation plan for ozone in Dallas and Tarrant counties.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

**Filed:** December 2, 1987, 9:34 a.m.  
TRD-8710822



## Apprenticeship and Training Advisory Committee (ATAC)

**Thursday-Friday, December 10-11, 1987, 1 p.m. on Thursday, 8:30 a.m. on Friday.** The Apprenticeship and Training Advisory Committee (ATAC) will meet in the Capital Ballroom A, Radisson Plaza Hotel, 700 San Jacinto Street, Austin. According to the agenda, the committee will hear reports from ATAC chairperson and from Adult Education/Employment and Training, Funding and Compliance Division of Texas Education Agency; hear reports from Bylaws Subcommittee, Finance and Budget Subcommittee, Planning Subcommittee, and Resources Subcommittee; discuss statewide plan of apprenticeship training; hear presentations on the Adult and Community Education State Conference, Apprenticeship and Training Association of Texas, and the Governor's Task Force on Vocational Education.

**Contact:** James C. Woodman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

**Filed:** December 2, 1987, 2:24 p.m.  
TRD-8710834



## Texas Board of Architectural Examiners

**Monday, December 14, 1987, 9 a.m.** The Rules Committee of the Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek Boulevard, Austin. According to the agenda, the committee will review rules and regulations.

**Contact:** Robert H. Norris, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1363.

**Filed:** December 2, 1987, 1:42 p.m.  
TRD-8710828



## State Board of Barber Examiners

**Tuesday, December 8, 1987, 8 a.m.** The State Board of Barber Examiners will meet in Suite C-275, 1300 East Anderson Lane, Austin. According to the agenda, the board will welcome newly appointed board member; approve minutes of the previous meeting; interview out-of-state applicants; sign teacher certificates; propose new rule for emergency adoption in compliance with House Bill 5 regarding the time limit for processing licenses and permits; and consider letters and reports to board by executive director. The board will also meet in executive session.

**Contact:** Jo King McCrorey, 1300 East Anderson Lane, C-275, Austin, Texas 78752, (512) 835-2040.

**Filed:** November 20, 1987, 8:51 a.m.  
TRD-8710418



## Texas Diabetes Council

**Thursday, December 10, 1987, 10 a.m.** The Texas Diabetes Council will meet in Room G-107, Commissioner's Conference Room, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve min-

utes of the August 13, 1987, meeting; hear a report from Texas affiliate of American Diabetes Association; consider crippled children's services update; hear reports on third party reimbursement for diabetes outpatient education and Texas diabetes control project; review and approve council workplan for the biennium; and discuss state plan for diabetes control and state agency recommendations.

**Contact:** Charlene Laramey, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534.

**Filed:** December 2, 1987, 4:15 p.m.  
TRD-8710843



## Texas Education Agency

**Wednesday, December 9, 1987, 10 a.m.** The Committee for Long-Range Planning of the State Board of Education of the Texas Education Agency submitted a revised agenda for a meeting to be held in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will meet with representatives of three other state education agencies doing work in education technology and with representatives of the Public Broadcasting System on their plan for education technology and hold work session on technology plans. The meeting was originally scheduled in Room 1-109.

**Contact:** W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

**Filed:** December 1, 1987, 3:31 p.m.  
TRD-8710783



## Texas Employment Commission

**Wednesday, December 9, 1987.** The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. Times and agendas follow.

**8:30 a.m.** The commission will approve

minutes of the previous meeting; consider internal procedures of commission appeals, higher level appeals in unemployment compensation cases on commission docket 49, and set date of next meeting.

**Contact:** Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

**Filed:** December 1, 1987, 2:53 p.m.  
TRD-8710780

**1:30 p.m.** The commission will approve minutes of previous meeting; hear public comment with regard to proper tax coverage in the field of employee leasing; and consider date and agenda items for next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** December 1, 1987, 2:52 p.m.  
TRD-8710779



### Texas Historical Commission

**Wednesday, December 9, 1987, 9 a.m.** The Permanent Advisory Committee of the State Preservation Board of the Texas Historical Commission will meet in emergency session in Room 103, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the committee will consider update on actions taken by the board, status of bonds for Capitol restoration, consultants selection procedure, scope of work and time schedule for master plan, timeline for all current projects, clear management plan for proposed projects, criteria for emergency projects, collections policy, and selection of exhibition subcommittee. The emergency status was necessary because original meeting had to be cancelled due to not having a quorum. Meeting had to be rescheduled before the State Preservation Board meeting.

**Contact:** Cindy Daily, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

**Filed:** December 1, 1987, 3:47 p.m.  
TRD-8710784



### Texas Department of Human Services

**Thursday-Friday, December 10-11, 1987, 1 p.m. daily.** The Family Violence Advisory Committee of the Texas Department of Human Services will meet in Room 4W, Fourth Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the committee approved minutes of the previous meeting; held announcements; considered subcommittee direction, subcommittee meetings, old business, and new business.

**Contact:** James C. Marquart, P.O. Box 2960, Austin, Texas 78769, (512) 450-3365.

**Filed:** December 1, 1987, 4 p.m.  
TRD-8710785

**Tuesday, December 15, 1987, 9 a.m.** The Vendor Drug Formulary Advisory Committee of the Texas Department of Human Services will meet in the Public Hearing Room, First Floor, 701 West 51st Street, Austin. According to the agenda, the committee will consider deletion of TDR products from vendor drug formulary and reevaluation by committee for exemption from TMAC; and consider drug applications for reglan 5 mg tablets, humate P, monoclate, mevacor 20 mg.

**Contact:** Carolyn Howell, P.O. Box 2960, Austin, Texas 78769, (512) 450-3053.

**Filed:** December 1, 1987, 4:02 p.m.  
TRD-8710786



### Texas Indian Commission

**Thursday-Friday, December 10-11, 1987, 1 p.m. daily.** The Texas Indian Commission will meet in the Third Floor Conference Room, TCB Administration Building, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the commissioners will hear reports and discussion relating to fiscal year 1987 and fiscal year 1988-1989 budgets, federal and state legislation, pending opinion requests, transfer to federal trust, fuel overcharge allocation plan, reports on activities of the Alabama-Coushatta and Tigua Indian reservations and the Texas Band of Kickapoo, hazardous waste disposal facility. The commissioners will also meet in executive session.

**Contact:** Nadia Bice, P.O. Box 12030, Austin, Texas 78711, (512) 458-1203.

**Filed:** December 2, 1987, 11:58 a.m.  
TRD-8710827



### State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

**Monday, December 14, 1987, 1:30 p.m.** The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9762—Application of Old Mission Assurance Company to acquire control of Independent Security Life Insurance Company, Dallas.

**Contact:** J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** December 2, 1987, 2 p.m.  
TRD-8710829



### Lamar University System

**Monday, December 7, 1987, 9 a.m.** The Board of Regents of the Lamar University

System met in the Map Room, John Gray Institute, 8555 East Florida, Beaumont. According to the agenda summary, the following committees met: Academic Affairs Committee, Finance and Audit Committee, Building and Grounds Committee, and Personnel Committee. The board also met in executive session.

**Contact:** George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

**Filed:** December 3, 1987, 9:25 a.m.  
TRD-8710848



### Pan American University

**Tuesday, December 8, 1987.** The Board of Regents of Pan American University will meet in the Boardroom, Administration Building, Pan American University, Edinburg. Times and agendas follow.

**10 a.m.** The Buildings and Grounds Committee will consider selection of architect for campus master plan and informational items.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:31 p.m.  
TRD-8710772

**10 a.m.** The Buildings and Grounds Committee will consider selection of architect for campus master plan and informational items.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:31 p.m.  
TRD-8710772

**10:15 a.m.** The Finance Committee will consider budget changes, higher education assistance fund request for PAU-E and PAU-B, professional liability insurance, request for approval of Title III consultant selection, and informational items.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:32 p.m.  
TRD-8710773

**10:30 a.m.** The Development Committee will consider acceptance of \$8,000 gift from Hagar Company for scholarships and acceptance of \$40,000 gift-in-kind, book, and tax records from Anne Robertson; consider acceptance of Neuhaus chair, \$11,110 from Robert Cochran Esstate for endowed scholarships, \$15,000 from Houston Endowment, Inc. for American Humanics, and informational items.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:32 p.m.  
TRD-8710774

**10:45 a.m.** The Brownsville Committee will consider vision 2000 resolution and president's informational items.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:32 p.m.  
TRD-8710775

**11 a.m.** The Academic Affairs Committee will consider informational items. The committee will also meet in executive session to consider employment of faculty, early retirement agreement, faculty member grievance, and deliberation regarding board vice chair election.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:33 p.m.  
TRD-8710776

**11:15 a.m.** The board will meet to approve executive session agenda of November 5, 1987; discuss, consider, and act on committee reports and recommendations, executive session items, and selection of legislative consultant; consider appointment of chairs to Building and Grounds and Finance Committees; discuss, consider, and act on resolution for former regent Eddie Cano, former regent Charles Villasenor, presidents informational items, and next meeting.

**Contact:** Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

**Filed:** December 1, 1987, 1:33 a.m.  
TRD-8710777



### Texas Public Finance Authority

**Tuesday, December 15, 1987, 10:30 a.m.** The Texas Public Finance Authority will meet in Room 104, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the authority will approve minutes of the December 2, 1987, meeting; adopt resolution authorizing Texas Public Finance Authority general obligation bonds, series 1987; adopt memorandum of understanding with the Texas Department of Mental Health and Mental Retardation and the Texas Youth Commission, financing agreements with the Texas Department of Mental Health and Mental Retardation and the Texas Youth Commission, funds management agreements with the State Treasurer, paying agent/registrant agreement, and an official statement; and consider schedule date and time of next board meeting.

**Contact:** Ann Moriarty, 201 East 14th Street, Austin, Texas 78701, (512) 463-5544.

**Filed:** December 1, 1987, 11:29 a.m.  
TRD-8710768



### Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

**Tuesday, December 15, 1987, 10 a.m.** The Hearings Division will consider Docket 6963—Regard the reasonableness of the Spring Creek and Kerr McGee coal contract costs.

**Contact:** Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 1, 1987, 2:51 p.m.  
TRD-8710782

**Wednesday, December 16, 1987, 10 a.m.** The Hearings Division will consider Docket 7812—Application of Brazos Telephone Cooperative, Inc. to detariff inside wire.

**Contact:** Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 1, 1987, 2:51 p.m.  
TRD-8710781

**Wednesday, December 16, 1987, 1:30 p.m.** The Hearings Division will consider Docket 7825—Application of Johnson Country Electric Cooperative, Inc. to decrease general service rate.

**Contact:** Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 2, 1987, 2:01 p.m.  
TRD-8710830



### Teacher Retirement System of Texas

**Thursday, December 10, 1987, 5 p.m.** The Board of Trustees of the Teacher Retirement System of Texas will meet at the Four Seasons Hotel, 98 San Jacinto Boulevard, Austin. According to the agenda, the board will consider proposed staff reorganization and salary adjustments. The board will also meet in executive session to discuss duties and salaries of particular employees.

**Contact:** Mary Godzik, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

**Filed:** December 2, 1987, 2:59 p.m.  
TRD-8710835



### Texas Savings and Loan Department

**Thursday, December 10, 1987, 9 a.m.** The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the applica-

tion of Columbia Savings Association, Webster, Harris County, for a loan office to be located at 12012 Wickchester, Houston, Harris County, from which record the commissioner will determine whether to grant or deny the application.

**Contact:** Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

**Filed:** December 1, 1987, 2:08 p.m.  
TRD-8710778



### Structural Pest Control Board

**Monday, December 14, 1987, 8:30 a.m.** The Structural Pest Control Board will meet in Suite 250, Building C, 1300 East Anderson Lane, Austin. According to the agenda summary, the board will elect chairman and vice-chairman; approve minutes of the previous meeting; hear the executive director's report and Larry Novy at 10 a.m.; discuss conflict rules and overlapping licensing authority; and consider Antonio E. Suarez doing business as Di-Tone Inspection Service at 1 p.m. The board will also meet in executive session.

**Contact:** David A. Ivie, 1300 East Anderson Lane, Suite 250, Austin, Texas 78752.

**Filed:** December 2, 1987, 9:06 a.m.  
TRD-8710826



### Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

**Monday, December 14, 1987, 10 a.m.** The Office of Hearings Examiner will meet in Room 618, to consider Docket 7175-C—Application for a certificate of convenience and necessity filed by CGSTP, Inc.

**Contact:** Douglas P. Roberts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** December 1, 1987, 11:37 a.m.  
TRD-8710769

**Monday, January 11, 1988, 8:30 a.m.** The Office of Hearings Examiner will meet in Room 1149A, to consider Docket 7252-C—Application for a water certificate of convenience and necessity filed by Parkerville East Water System.

**Contact:** Ann MacMurray, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** December 1, 1987, 11:37 a.m.  
TRD-8710770

**Tuesday, January 26, 1987, 10 a.m.** The commission will meet in Room 118, to consider City of Aspermont #512 seeking a permit to maintain an existing dam and reservoir impounding 1196 acre feet of water on Tonk Creek, tributary of Mountain Fork

Brazos River, tributary of the Brazos River, Brazos River Basin, for recreational use and for irrigation of land.

**Contact:** Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** December 2, 1987, 4:08 p.m.  
TRD-8710842

**January 26, 1988, 10 a.m.** The commission will meet in Room 118, to consider William Carroll and wife Mary Carroll seeking a permit to maintain two existing dams creating an exempt on-channel reservoir and an off channel reservoir. The on channel reservoir is on an unnamed tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, for irrigation purposes.

**Contact:** Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** December 2, 1987, 4:08 p.m.  
TRD-8710841



## Regional Agencies

### Meeting Filed December 1

**The San Patricio County Appraisal District,** Board of Directors, will meet in the Court-house Annex, Sinton, on December 10, 1987, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78787, (512) 364-5402.  
TRD-8710766



### Meetings Filed December 2

**The Blanco County Appraisal District,** Board of Directors, will meet in the Blanco County Courthouse Annex, Johnson City, on December 8, 1987, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

**The Brazos Valley Development Council,** Board of Directors, will meet in Suite 2, 3006 East 29th Street, Bryan, on December 10, 1987, at 7 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77802, (409) 776-2277.

**The Comal Appraisal District,** Board of Directors, will meet at 430 West Mill Street, New Braunfels, on December 9, 1987, at 7:30 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78130, (512) 625-8597.

**The Education Service Center, Region VI,** Board of Directors, will meet at the College Station Hilton, College Station, on December 10, 1987, at 5 p.m. Information may be obtained from M.W. Schlotter, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

**The Education Service Center, Region XX,** Board of Directors, will meet at 1314 Hines Avenue, San Antonio, on December 16, 1987, at 3 p.m. Information may be obtained from Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 271-7611.

**The Edwards Underground Water District,** Board of Directors, will meet at 1615 North St. Mary's, San Antonio, on December 8, 1987, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78215, (512) 222-2204.

**The Hays County Appraisal District,** Board of Directors, met in the Boardroom, 632 "A" East Hopkins, San Marcos, on December 7, 1987, at 5:30 p.m. and December 9, 1987, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

**The Jack County Appraisal Review Board,** Appraisal Review Board, will meet at 216-D South Main, Jacksboro, on December 10, 1987, at 9 a.m. Information may be obtained from Doris G. Ray or Linda Williams,

216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

**The San Patricio County Appraisal District,** Appraisal Review Board, met in the Court-house Annex, Sinton, on December 4, 1987, at 2 p.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

**The Tyler County Tax Appraisal District,** Board of Directors, will meet at 103 Pecan, Woodville, on December 9, 1987, at 4 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

**The Wise County Appraisal District,** Board of Directors, will meet in the Boardroom, 206 South State Street, Decatur, on December 10, 1987, at 9 a.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081, ext. 74.  
TRD-8710797



### Meetings Filed December 3

**The Central Texas Council of Governments,** Executive Committee, will meet in the Special Events Room, Bell County Expo Center, Belton, on December 17, 1987, at 11 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1803.

**The Deep East Texas Council of Governments,** Board of Directors, will meet in the First United Methodist Church Fellowship Hall, Jasper, on December 17, 1987, at 11 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704.

**The Gonzales County Appraisal District,** Board of Directors, will meet at 928 St. Paul Street, Gonzales, on December 10, 1987, at 5 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.  
TRD-8710849



# In **Addition**

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department on Aging Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department on Aging (TDoA) furnishes this notice of consultant contract award. The consultant proposal request was published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4140).

**Description of Service.** The service to be provided is to assist the department's demonstration and replication of an initiative to introduce community based long-term care service systems into aging service systems statewide by concept and materials development of a videotape series designed to provide information and technical assistance to other areas on the implementation of community based long-term care service systems; script review and production of the videotape series; preparation of statewide data forecasting service needs of older persons based on functional capacities and grouped by area agency on aging geographic boundaries; consultation on the organization of a corporate advisory board and specific tasks which the corporate advisory board would be requested to accomplish in furthering the replication of the community based long-term care service system; and revision of the computerized program planning model developed in fiscal year 1987 for the demonstration project sites for the expanded use by the area agencies on aging statewide in planning local service strategies.

**Name of Consultant.** The consultant selected is SAVANT, Inc., Bethesda, Maryland.

**Total Value and Terms of the Contract.** The contract begins December 1, 1987, and ends September 30, 1988. Payments under the contract shall not exceed \$112,000. This contract is funded with \$82,000 by the Federal Government and with \$30,000 state administration funds being used as the required match to the federal funding award.

**Due Dates for Reports.** The consultant's reports and documentation will be delivered to the Chief of Program Specialties, Texas Department on Aging, under timeframes specified in the contract.

Issued in Austin, Texas, on December 1, 1987.

TRD-8710767      O. P. (Bob) Bobbitt  
Executive Director  
Texas Department on Aging

Filed: December 1, 1987  
For further information, please call (512) 444-2727.

## Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of November 16-27, 1987.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Texaco, Inc., Pecos; gas well flare; Pecos, Reeves County; 18461; new source

Val Tex Asphalt Company, Raymondville; asphalt concrete plant; Raymondville, Willacy County; 18465; new source

Mobil Exploration and Producing U.S., Inc., Midkiff; gas sweetening plant; Midkiff, Midland; 18466; new source

Keller Aluminum Products of Texas, Woodville; aluminum extrusion paint facility; Woodville, Tyler County; 18467; new source

Bruce Hardwood Floors, Center; UV curable coating finish; Center, Shelby County; 18470; new source

LTV Aerospace and Defense Company, Grand Prairie; KPR VOC control system; Grand Prairie, Dallas County; 18471; new source

LTV Aerospace and Defense Company, Dallas; KPR VOC control system; Dallas, Dallas County; 18472; new source

Issued in Austin, Texas, on December 1, 1987.

TRD-8710821      Bill Ehret  
Director of Hearings  
Texas Air Control Board

Filed: December 2, 1987  
For further information, please call (512) 451-5711, ext. 354



## Texas Department of Commerce Private Activity Bond Allocation Reports

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation. On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period November 16, 1987, through November 20, 1987.

### Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of November 20, 1987: \$580,101.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from November 6, 1987, through November 20, 1987, in order of issuer, user, description, and amount: City of El Paso, Industrial Development Authority, Westwood Lighting Group, Inc., manufacturer of portable lighting, lampshades, and related products: \$3,000,000.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from November 16, 1987, through November 20, 1987: None.

Issued in Austin, Texas, on November 25, 1987

TRD-8710823 J. W. Lauderback  
Executive Director  
Texas Department of Commerce

Filed: December 2, 1987  
For further information, please call (512) 472-5059



The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling

is available for all other issuers of bonds requiring an allocation. On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period November 23, 1987-November 27, 1987.

### Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of November 27, 1987: \*\$5,095,101.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from November 23, 1987-November 27, 1987: none.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from November 23, 1987-November 27, 1987, in order of issuer, user, description, and amount: Brazos Higher Education Authority, Inc., eligible borrowers, qualified student loan bonds, \$100,000,000; Galveston County Housing Finance Corporation; Friendswood Retirement Living Center; qualified residential rental project, \$7,635,000; Texas Housing Agency, eligible borrowers, qualified mortgage bonds (MCC's), \$200,000,000.

\* (1) Bonds for the Galveston County Housing Finance Corporation were issued and delivered at a lower amount than the reservation request.

\* (2) The Texas Housing Agency, Del Norte Apartments reservation was cancelled.

Issued in Austin, Texas, on December 1, 1987.

TRD-8710824 J. W. Lauderback  
Executive Director  
Texas Department of Commerce

Filed: December 2, 1987  
For further information, please call (512) 472-5059.



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> Agricultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 12/07/87-12/13/87	18.00%	18.00%
Monthly Rate— Article 1.04(c) <sup>(1)</sup> 12/01/87-12/31/87	18.00%	18.00%

Standard Quarterly Rate—Article 1.04(a)(2) 01/01/88-03/31/88	18.00%	18.00%
Retail Credit Card Quarterly Rate—Article 1.11(3) 01/01/88-03/31/88	18.00%	N/A
Lender Credit Card Quarterly Rate—Article 15.02(d)(3) 01/01/88-03/31/88	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2)(2) 01/01/88-03/31/88	18.00%	18.00%
Retail Credit Card Annual Rate—Article 1.11(3) 01/01/88-03/31/88	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/88-03/31/88	18.00%	N/A
Judgment Rate—Article 1.05, §2 12/01/87-12/31/87	10.00%	10.00%

- (1) For variable rate commercial transactions only
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on November 30, 1987.

TRD-8710818      Al Endsley  
Consumer Credit  
Commissioner

Filed: December 2, 1987  
For further information, please call (512) 479-1280.



## Texas Commission for the Deaf Correction of Error

The Texas Commission for the Deaf submitted a proposed amendment which contained an error as published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4361).

In §183.75, subparagraph (1)(D) should read:  
“ (D) submit **evaluation** application forms and payment of Level III **evaluation** fee: and”

## Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Texas Electric Cooperatives, on November 23, 1987, assessing \$7,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 24, 1987.

TRD-8710771      Karen A. Phillips  
Chief Clerk  
Texas Water Commission

Filed: December 1, 1987  
For further information, please call (512) 463-7898.



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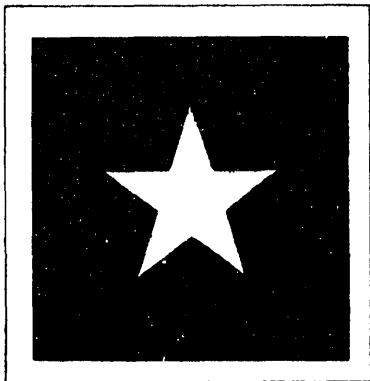
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